

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

NOVEMBER 3, 2021

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LORNA JOHN, Vice Chairperson  
CARL BLAKE, Board Member  
CHRISHAUN SMITH, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairman  
PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS  
BRANDICE ELLIOTT  
ANNE FOTHERGILL  
JONATHAN KIRSCHENBAUM  
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SARAH BAJAJ, ESQ.  
MARY NAGELHOUT, ESQ.  
RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from  
the Regular Public Hearing held on November 3, 2021.

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P-R-O-C-E-E-D-I-N-G-S

10:30 a.m.

MR. MOY: Okay, so the board is now in its public hearing session, and the first case on the docket is case Application No. 20074A, A as in alpha of Stanton Road SE, LLC. This application is in for special exception under the RA-use new residential development provisions of Subtitle U section 421.1. And this has been amended for modification of significance from the BZA case number 20074 that had effective date of August 3rd, 2019, to reduce the number of parking spaces from 15 to 12, reducing the height of the required retaining wall in a new three story 22 unit apartment building in the RA-1 zone.

The property is located at 2604, and 2610 Stanton Road, SE, Square 5869, lot 84. As board is aware, this is one of the two carry over cases from the hearing of last week, which was October 27th. Finally Mr. Chairman, there is a revised plat that was submitted within the 24 hour block, and as you're aware, in the public record, there is a revised site plan regarding the number of units, and the number of parking spaces. I would ask if the applicant can confirm that for the record, and that's it for me Mr. Chairman.

BZA CHAIR HILL: Okay, great. Ms. Nagelhout, can you hear me? Ms. Nagelhout? All right, I'll come back. If

1 somebody can remind me, I had a question for Ms. Nagelhout,  
2 if I forget. Okay, Mr. Sullivan, could you introduce  
3 yourself for the record please?

4 MS. NAGELHOUT: I'm back, sorry.

5 BZA CHAIR HILL: That's all right. Ms. Nagelhout,  
6 on that previous case, I know if you could go back, and check  
7 the record, I know I made a statement of it, but in that  
8 first condition, it was that they were going to look at the  
9 numbers on October 15th of that first year.

10 MS. NAGELHOUT: Yes, okay.

11 BZA CHAIR HILL: Okay, thank you. Mr. Sullivan,  
12 could you introduce yourself for the record please?

13 MR. SULLIVAN: Yes, thank you Mr. Chair, and  
14 members of the board, Marty Sullivan, with Sullivan and  
15 Barros on behalf of the applicant.

16 BZA CHAIR HILL: Okay. And Mr. Sullivan, who is  
17 with you here today?

18 MR. SULLIVAN: We have the owner, Mr. Malkani.

19 BZA CHAIR HILL: Okay, all right, so we'll see  
20 where we get. Mr. Sullivan, can you clarify a little bit  
21 about the parking relief?

22 MR. SULLIVAN: Yeah, so there is no parking  
23 relief. This was an RA-1 special exception case, and the  
24 original case provided 15 parking spaces, the actual  
25 requirement is just three spaces. And so the modification

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1 is just to reduce the parking from 15 to 12. So, it's not  
2 a change in the relief, and it doesn't require relief. In  
3 fact I would have filed this, if it was just the parking, I  
4 would have filed it as a modification of consequence, rather  
5 than significance, but originally we also were putting a  
6 habitable penthouse on when we filed this modification.

7           So, we renewed the habitable penthouse, and now  
8 it's just the parking. And that's one of the reasons why I  
9 had some late filings, because I was working with Ms. Mallard  
10 at OZ, about how best to present the fact that we have a  
11 modification that was requested, and then was altered so that  
12 one modification remains, and one was taken away. Because  
13 we want the plan approved for the penthouse to be what was  
14 originally approved, or that is what is originally approved,  
15 we're not asking for anything with the building itself.

16           We're just asking that the parking be reduced at  
17 this point. And I needed to have the site plan, and the plat  
18 match up so that together on the site plan, and the plat,  
19 what you see is the already approved penthouse, which is not  
20 being modified, together with the parking area, which is  
21 being modified.

22           BZA CHAIR HILL: Okay. All right, I think that  
23 clears it up a little bit. If Mr. Sullivan -- so go ahead,  
24 why don't you walk us through your presentation, and then we  
25 can see where we get.

1 MR. SULLIVAN: Okay, so we do have a PowerPoint  
2 presentation --

3 (Simultaneous speaking.)

4 BZA CHAIR HILL: Also for the record, I want to  
5 go ahead, and allow everything in considering the plat,  
6 because I think the board should see everything that we need  
7 to look at in order to make a decision, unless the board has  
8 an issue, raise your hands. Okay, we'll go ahead, and do  
9 that. All right Mr. Sullivan.

10 MR. SULLIVAN: Thank you. So, next slide please.  
11 On July 24th, 2019, the BZA granted special exception relief  
12 under 421 for an RA-1 project. There was no relief requested  
13 as part of that, and there is no relief requested now, but  
14 it was for a three story, 22 unit apartment building with 15  
15 parking spaces. Next slide please. So, this is the previous  
16 site plan, which was approved as part of the original BZA  
17 case, and you'll see the parking spaces on the right there.  
18 You'll also see the outline of the building, which is a  
19 neighboring building, and neighboring property.

20 Because of the distinct topography from front to  
21 back here, this particular plan would have required  
22 significant, and very invasive excavating work on the  
23 neighbor's property, including tie backs under the neighbor's  
24 building. And in order to avoid that, it just took removing  
25 three parking spaces. Next slide please. So, this is the

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1 new plan. Again, it's 12 spaces, it's still four times the  
2 required parking, still supported by the ANC, and the office  
3 of planning, and now no longer needing the invasive, and  
4 expensive excavation work, and Mr. Malkani can answer any  
5 specific questions about that work if the board has questions  
6 about that.

7           And you'll see here on this site plan as well,  
8 that penthouse that's there now is what was originally  
9 approved, so we're asking for no changes to that, or to  
10 anything with the building itself. This describes again from  
11 15 to 12, ANC supports the modification, they supported the  
12 original case, and they support the modification. OP is  
13 recommending approval as well, and DDOT as well has no  
14 objection. We do have TDM conditions just because of the  
15 project itself, but not because of any relief. Next slide  
16 please.

17           Parking requirement is just three spaces, next  
18 slide please. So, I think 704.2D, I think that should say  
19 704.6, public hearing on a request for modification shall be  
20 focused on the relevant evidentiary issues requested, and any  
21 condition impacted by the requested modification, and we  
22 don't think that any conditions are impacted by this very  
23 minor change supported by all, and made for a good reason.  
24 And so that's all we have. If you have any questions for Mr.  
25 Malkani regarding the need for this, or anything else, we're

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1 here to answer questions, thank you.

2           BZA CHAIR HILL: all right, does the board have  
3 any questions for the applicant? Mr. Sullivan, I've got a  
4 little bit, so that penthouse is still there, it's just not  
5 occupied?

6           MR. SULLIVAN: Well, it's a different size too.  
7 So, the penthouses were -- I don't want to get too far into  
8 it, but habitable penthouse was permitted in the RA-1 for a  
9 couple years under a misinterpretation of the existing  
10 regulations. When we filed the original case, I read the  
11 regulations, I saw that it wasn't permitted, and we didn't  
12 ask for a habitable penthouse. Subsequent to that, I  
13 discovered that habitable penthouses were being approved in  
14 the RA-1.

15           And so, when we needed to go back for this  
16 modification for parking, we decided well, let's ask for a  
17 habitable penthouse now that they're permitted. Shortly  
18 after we filed, that was turned around, it was discovered  
19 that that interpretation was wrong, it was no longer  
20 permitted. We waited until after the Zoning Commission then  
21 took this up, and the Zoning Commission decided not to  
22 implement the amendment that would have made them permissible  
23 again, and so now it's gone. Maybe we'll ask for a  
24 modification down the road if the Zoning Commission brings  
25 it back.

1 But what was originally approved, you can have  
2 mechanical penthouse, and for other space, ancillary to a  
3 roof deck, and it's limited to 20 percent of that rooftop  
4 area. So, it has to be smaller, and the use changes.

5 BZA CHAIR HILL: So, you guys are just using it  
6 as an ancillary use right now, you're not using it for  
7 mechanical?

8 MR. SULLIVAN: I'm not sure if there's mechanical  
9 in there, or not, but it's mostly ancillary, yes.

10 BZA CHAIR HILL: Okay, all right, anybody got any  
11 questions? And to the Office of Planning?

12 MS. BROWN-ROBERTS: Good morning Mr. Chairman, and  
13 members of the commission, Maxine Brown-Roberts representing  
14 the Office of Planning on BZA case 274A, a modification of  
15 significance to reduce the number of parking spaces from 15,  
16 to 12. As stated by the applicant in the report, the  
17 reduction is necessary to reduce the amount of excavation  
18 height, and the length of retaining walls, and disturbance  
19 of stated soil conditions on the adjacent properties.

20 This reduction would also result in a larger green  
21 area, which would improve the development. The TDM plan was  
22 approved as part of the original application, and OP  
23 recommends that this be retained. The Office of Planning,  
24 therefore recommends approval of the requested modification  
25 of significance. Thank you Mr. Chairman, and I'm available

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1 for questions.

2 BZA CHAIR HILL: Okay, does anybody have any  
3 questions for the Office of Planning? Does the applicant  
4 have any questions for the Office of Planning?

5 MR. SULLIVAN: No, thank you.

6 BZA CHAIR HILL: Mr. Young, is there anyone here  
7 wishing to speak?

8 MR. YOUNG: There is not.

9 BZA CHAIR HILL: Okay, does the board have any  
10 final questions? All right, Mr. Sullivan, is there anything  
11 you want to add at the end?

12 MR. SULLIVAN: No, thank you.

13 BZA CHAIR HILL: All right, I'm going to go ahead,  
14 and close the hearing, and the record. Commissioner Shapiro,  
15 I'm going to pick on you, I'm already dying almost, and it's  
16 only been like an hour. Would you start our deliberations?

17 COMMISSIONER SHAPIRO: Yes sir, this is pretty  
18 straight forward. I had a procedural thought, which is, Mr.  
19 Sullivan said that essentially this could now be a  
20 modification of consequence, and not modification of  
21 significance anymore. I'm just curious about did we ever  
22 pull something back from a modification, just to actually  
23 rehear it as a modification of consequence? It's neither  
24 here, nor there, I was just kind of intellectually curious  
25 about. But at this point the only thing that's before us is

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1 a minor reduction of parking.

2 I don't have any concern, we are seeing the  
3 revised plan, and site plan, and I have no concerns about  
4 this at all Mr. Chair it's pretty straight forward. I'll  
5 leave it at that.

6 MR. SULLIVAN: Okay, Mr. Smith?

7 MEMBER SMITH: I agree with Mr. Shapiro, and  
8 believe the things that have been demonstrated on the  
9 application. I do believe that the applicant has met the  
10 requirements to be able to amend the special section, and  
11 this modification of significance to reduce the required  
12 amount of parking given the site constraints in the parking  
13 site. The site is relatively close to the Anacostia Metro  
14 Station, so I believe that parking wouldn't be a major, major  
15 concern. So, with that, I stand on OP's staff report, give  
16 it great weight, and also recognizing ANC is in support, and  
17 I will support this application.

18 MR. SULLIVAN: Thank you. Vice Chair John?

19 VICE CHAIRPERSON JOHN: I agree with the comments  
20 so far, and I believe this is a very straight forward  
21 application, and I appreciate the applicant's explanation of  
22 how we got to where we are, as well as OP's analysis, and I  
23 would give great weight to OP's recommendation. I don't  
24 believe we have enough, anything form the ANC, so I would  
25 recommend approval.

1 MR. SULLIVAN: Thank you. Mr. Blake?

2 MEMBER BLAKE: Yeah, I would echo the comments  
3 made by the members of the board to this point. I do think  
4 the modification will also result in a less intrusive project  
5 to the neighboring properties, and increasing the green space  
6 will also improve the development. The reduction in parking  
7 spaces from 15 to 12 is fairly reasonable given the fact  
8 that, as we said, the actual requirement is actually much  
9 lower than that.

10 So, we continue to have ample parking made  
11 available, and the ANC did, I believe, indicate in its  
12 original statement that it agreed for the reduction of  
13 parking.

14 BZA CHAIR HILL: Okay, thank you. I'm going to  
15 go ahead, and make a motion to approve Application No. 20074A  
16 as in apple, including the existing TDM conditions one  
17 through nine remaining in effect, and asking for a second,  
18 Ms. John?

19 VICE CHAIRPERSON JOHN: Seconded.

20 BZA CHAIR HILL: Motion has been made, and  
21 seconded. Mr. Moy, could you take a roll call?

22 MR. MOY: Thank you Mr. Chairman. When I call  
23 each of your names, if you would please respond with a yes,  
24 no, or abstain to the motion made by Chairman Hill to approve  
25 the amended application for the relief requested. The motion

1 was seconded by Vice Chair John. Zoning Commissioner Peter  
2 Shapiro?

3 COMMISSIONER SHAPIRO: Yes.

4 MR. MOY: Mr. Smith?

5 MEMBER SMITH: Yes.

6 MR. MOY: Mr. Blake?

7 MEMBER BLAKE: Yes.

8 MR. MOY: Vice Chair John?

9 VICE CHAIRPERSON JOHN: Yes.

10 MR. MOY: Chairman Hill?

11 BZA CHAIR HILL: Yes.

12 MR. MOY: Staff would record the vote as five to  
13 zero, to zero. And this is on the motion made by Chairman  
14 Hill to approve, the motion to approve was seconded by Vice  
15 Chair John, also in support of the motion to approve is  
16 Zoning Commissioner Peter Shapiro, Mr. Smith, Mr. Blake, Vice  
17 Chair John, Chairman Hill, the motion carries, and voted  
18 five, to zero, to zero.

19 BZA CHAIR HILL: Okay, thank you Mr. Moy. All  
20 right, you can call the next one Mr. Moy.

21 MR. MOY: This would be case application number  
22 20454 of 4234 Benning, LLC. This application has been  
23 amended for special exceptions under the new residential  
24 development requirements of Subtitle U, Section 421.1,  
25 minimum parking requirements of Subtitle C, Section 701.5.

1 This is to raise an existing one story detached principle  
2 dwelling unit, and to construct a new three story detached  
3 eight unit apartment building with cellar, and penthouse.  
4 RA-1 Zone, the property is located at 4234 Benning Road,  
5 Northeast.

6 Again, Mr. Chairman, this is another carry over  
7 case from the board's hearing of last week, October 27th, and  
8 that's all I have to report, thank you.

9 BZA CHAIR HILL: Okay, Mr. Bello, can you hear me?

10 MR. BELLO: Clearly sir, good morning.

11 BZA CHAIR HILL: Good morning. Can you introduce  
12 yourself for the record please?

13 MR. BELLO: Toye Bello, representing the  
14 applicant, 1917 Benning Road, Northeast.

15 BZA CHAIR HILL: Okay, and who is with you here  
16 Mr. Bello?

17 MR. BELLO: We have the architect with us, Ramy  
18 Ali.

19 BZA CHAIR HILL: Okay, Mr. Ali, can you hear me?

20 MR. ALI: Yes, good morning chairman.

21 BZA CHAIR HILL: Good morning, could you introduce  
22 yourself for the record?

23 MR. ALI: Yes, Ramy Ali from Ram Design, the  
24 project architect.

25 BZA CHAIR HILL: Great, thank you Mr. Ali. Mr.

1 Ali, this is not your first time with us on video, is it?

2 MR. ALI: On video yes, I didn't have the camera  
3 in the past, but today I am on video, yes.

4 BZA CHAIR HILL: Okay, welcome Mr. Ali, welcome  
5 to the pandemic. All right, Mr. Bello, if you could go  
6 ahead, and walk us through your presentation, and explain how  
7 you think your client is meeting the criteria for us to grant  
8 the relief requested. I'm going to put 15 minutes on the  
9 clock just so I know where we are, and you can begin whenever  
10 you like.

11 MR. BELLO: Thank you. If Mr. Paul will pull up  
12 the PowerPoint presentation?

13 BZA CHAIR HILL: And Mr. Bello, this isn't for a  
14 variance, is it?

15 MR. BELLO: No sir, it's for two special  
16 exceptions. One to establish the use of an apartment house,  
17 and the other from the parking requirement.

18 BZA CHAIR HILL: Okay, because I thought you had  
19 the prongs in here, okay. Go ahead Mr. --

20 MR. BELLO: Next slide please. So, the two areas  
21 of relief that the applicant seeks is a special exception to  
22 establish the use, and a special exception on the parking  
23 requirement, both of them are not voidable. Next slide  
24 please. This is basically just a description of the  
25 neighborhood, which features a mix of residential types,



1 including apartments, churches, and single family row  
2 dwellings. Next please.

3 Compliance with the burden of proof, Subtitle X,  
4 special exception A requires that the project be in harmony  
5 with the general purpose of the zoning regulations, and maps.  
6 The use that the applicant seeks is permitted by special  
7 exception, which is essentially permitted use subject to  
8 special exception. The project complies with the purpose of  
9 the RA-1 zone district that is set forth under section  
10 300.1(a), which permits all types of residential developments  
11 provided they conform to proscribed development.

12 This project conforms to all proscribed  
13 developments, except the parking requirement, which is relief  
14 that isn't imposed on the applicant. Next slide please. B,  
15 will not tend to affect adversely the use of neighboring  
16 properties. Proposed building is free standing, and  
17 unattached to any other adjoining structure. The proposed  
18 project is separated from the face of the walls of adjoining  
19 buildings, east, and west, 12, and 8 feet respectively, hence  
20 light, and air are not unduly affected.

21 Impact on increase in vehicle, transit,  
22 pedestrian, bicycle trips, and availability of the street is  
23 minimal. Property fronts on Benning Road, it's accessible  
24 for proximity to two metro stations, Benning Road, and  
25 Minnesota Avenue stations. Subject properties within the H

1 street Benning Road priority corridor network metro bus  
2 route. Next please. This is a plat, the builder's plat of  
3 proposed site layout. Again, the plat represents how the  
4 application complies with all of the development standards  
5 for the zone of location.

6           Next slide please. This is a rendering of the  
7 elevation of the building. As indicated, the building is  
8 flanked on both sides by apartment buildings, and this design  
9 has incorporated all of the office requirement  
10 recommendations. Next slide please. The photographs of the  
11 two adjoining apartment buildings, the building to your left  
12 is the white building, is the subject property that's going  
13 to be made adaptive use of. Next slide please. These are  
14 row houses across the street, and in a different zone  
15 district, these are properties in the RF-1 zone district,  
16 they're across the street from the spot.

17           Next slide please. We'll meet such conditions as  
18 may be specified under the section. Adequacy of existing  
19 planned area schools to accommodate residents. Number of  
20 dwelling units not substantial, this application seeks to  
21 establish eight units at this property. There's no comment  
22 from the school board. The schools in proximity are Smothers  
23 Elementary, Bard High School, Early College School, and three  
24 public charter schools that will be in close proximity to the  
25 subject property.

1           The subject properties were served by schools in  
2 reasonably close proximity. Public streets, recreation, and  
3 other services to accommodate residents. The property is  
4 deemed very workable in light of a workability score of 75  
5 out of 100, and a backable score of 57. Property is within  
6 0.6 miles of the Blue Metro line, and 1.3 miles of the  
7 Minnesota Metro Station. The property is served by bus lines  
8 B7, and B8, and is located on a major thoroughfare.

9           Nearby parks, Marvin Gaye Park, Woodson  
10 Recreational Center, the Girls & Boys Club of America.  
11 Property is well served by proximity to public streets,  
12 recreation, and other services to accommodate the residents.  
13 Next slide please. This is -- the purpose of this section,  
14 which deals with the special exception from the parking  
15 requirement, the section provides flexibility from the  
16 minimum required number of parking spaces, and the provision  
17 of the required number of parking spaces would be contrary  
18 to other District of Columbia regulations, or impractical,  
19 or unnecessary due to the shape, or configuration of the  
20 site, a lack of demand for parking, or proximity to transit.

21           Retention of the existing curb on Benning Road is  
22 contrary to DDOT's regulations. DDOT has recommended closure  
23 of the existing curb cut, which is the only access to this  
24 property. The property does not butt into the public right  
25 of way. The property is in close proximity to two metro

1 stations, as it is located within a metro bus line already  
2 covered network route. Next slide please. The Board of  
3 Zoning Adjustments may grant a full, or partial reduction in  
4 the number of required parking spaces. Applicant finds  
5 refuge under at least two applicable provisions, namely C,  
6 Section 703.2(b), and 703.2(h)(1).

7 C703.2(b) would use those structures particularly  
8 set up by mass transit, shared vehicles, or bicycle facility.  
9 Subject property is well served by mass transit, given its  
10 proximity to the Benning Road, and Minnesota Avenue Metro  
11 stations. The property is separated by three bus routes, and  
12 is located within the H Street, Benning Road priority  
13 corridor network Metro bus route. The project proposes four  
14 on site bicycle storage places. Next slide please. The  
15 board may grant a full or partial, I think this is a repeat.  
16 The property has been denied by the district DDOT request.

17 The applicant had actually designed to meet the  
18 parking requirement, but the elimination of the curb would  
19 make that impossible. Next slide please. Any reduction in  
20 the required number of parking spaces shall be only for the  
21 amount where the applicant is physically unable to provide.  
22 The required parking space for this project would have been  
23 one anyway, so we're only asking for the relief for that one  
24 parking space. Next slide please. Any request for a  
25 reduction in minimal parking space shall include the

1 transportation demand management plan.

2 DDOT has not recommended any transportation  
3 monitoring plan given the de minimis one parking space that  
4 we ask relief for. Next slide please. These are components  
5 of the general provisions of Subtitle X, that will be in  
6 harmony. The required parking from which relief is sought  
7 is for one parking space, therefore the relief is de minimis.  
8 The proposed use the parking serves is use permitted in the  
9 underlines of district by special exception, subject to  
10 conditions stipulated.

11 Applicants submit that the application complies  
12 on conditions applicable. Slide please. Will not tend to  
13 affect adversely, the use of neighboring property. The  
14 subject property is well served by mass transit stations in  
15 close proximity, and is located in a road priority network  
16 metro bus route. Four onsite bicycle storage spaces are  
17 provided, removal of the curb cut will add street parking  
18 space. Next slide please. Applicant has demonstrated that  
19 application meets the conditions set forth under Subtitle C,  
20 Chapter 7, Section 703.2(b), and 703.3, and 703.4 as  
21 applicable.

22 Next slide please. ANC 7D voted to oppose the  
23 application, and recommended that the application be denied  
24 because the applicant is unable to grant the ANC's request  
25 to include two affordable housing units in the project. Next

1 slide please. Application complies with the three prong test  
2 for the granting of special exceptions sought, Office of  
3 Planning recommends approval of the project, DDOT has no  
4 objection to the application. Applicant respectfully  
5 requests that the board grant the release sought for all the  
6 forgoing reasons.

7 And that would be our presentation, unless the  
8 architect wants to walk you through the drawings. Thank you.

9 BZA CHAIR HILL: Thanks Mr. Bello. It looks as  
10 though -- so there's an apartment building to the left, and  
11 the right of this apartment building, correct? The proposed  
12 apartment building?

13 MR. BELLO: That's correct.

14 BZA CHAIR HILL: And the height is about the same  
15 as the one to the left, it looks like?

16 MR. BELLO: One is actually higher. One is 39  
17 feet, while we proposed 35 feet, and then one is slightly  
18 lower at 30 feet.

19 BZA CHAIR HILL: Okay. And the ANC, and Mr. Moy,  
20 that ANC letter is in the record on time, correct? I'll come  
21 back to Mr. Moy.

22 MR. MOY: Yeah, I just want to check the record,  
23 I was in the midst of doing that when you called me, so let  
24 me check.

25 BZA CHAIR HILL: I see it in the record, I'm just

1 saying we don't have to ask about any timing for that.

2 MR. MOY: Well typically those filings from  
3 parties are due by a certain time, that's why I want to check  
4 the date, but I do know that it was not in the record last  
5 week, so I would suspect Mr. Chairman, out of the abundance  
6 of caution, there's no prejudice if you were to act on  
7 allowing into the record.

8 BZA CHAIR HILL: Okay, I'm going to go ahead, and  
9 allow it into the record unless the board has any issues.  
10 Mr. Bello, so the vote was five to seven, so it was kind of  
11 split.

12 MR. MOY: It was actually unanimous against. I  
13 don't think that's written correctly.

14 COMMISSIONER SHAPIRO: I think that was a typo in  
15 the letter.

16 MR. MOY: Okay, that sounds like a huge ANC.  
17 Right, so they wanted affordable housing, and parking for the  
18 neighborhood. Okay, you don't need to respond. All right,  
19 does the board have any questions for the applicant? Mr.  
20 Shapiro?

21 COMMISSIONER SHAPIRO: Just a quick one Mr. Bello.  
22 I was reading Mr. Durant's letter, so the applicant is  
23 contributing to the Affordable Housing Trust Fund because of  
24 the penthouse, right? How much is that?

25 MR. BELLO: Well, I think the preceding

1 application briefed the issue of the back, and forth about  
2 the permitted habitable penthouse. So, the project has  
3 revised the drawings to eliminate that penthouse. Again,  
4 it's directly related to what the previous applicant  
5 explains, that I don't really know.

6 COMMISSIONER SHAPIRO: So you're actually, there's  
7 not a habitable penthouse, and you are not making a  
8 contribution to the Affordable Housing Trust Fund? All  
9 right, thank you. That's all I have Mr. Chair. And this is  
10 under ten units, the IZ requirement doesn't apply.

11 MR. BELLO: That's correct sir.

12 COMMISSIONER SHAPIRO: Okay, thank you Mr. Chair.

13 BZA CHAIR HILL: Okay, great, thank you. Mr.  
14 Smith, did I see you have your hand up?

15 MEMBER SMITH: You did, but that was the question  
16 I was going to ask for clarification on, that given the size  
17 of these, the number of units he proposed, I wanted  
18 clarification about the contribution that he was speaking of  
19 in the PowerPoint, but Mr. Bello answered that question for  
20 me. So, thank you Commissioner Shapiro.

21 BZA CHAIR HILL: Okay, thank you. Ms. Brown-  
22 Roberts?

23 MS. BROWN-ROBERTS: Good morning Mr. Chairman, and  
24 again, our members of the BZA, Maxine Brown-Roberts on Case  
25 20454. Our report outlines that a development of eight units



1 would not negatively affect the school, recreation,  
2 landscape, and grading, and that the design materials, and  
3 height are compatible with the surrounding buildings, and  
4 would meet all the development of standards except for the  
5 parking. The parking relief is due to having an alley, or  
6 permitted, or not permitted, a curb cut from Benning Road.

7           The property is proximate to two metro stations,  
8 and, or bus routes, and therefore should not negatively  
9 affect impact of traffic movements in the area. Regarding  
10 the general special exception requirement for Subtitle X, the  
11 RA zone allows apartment buildings provided that the  
12 requirements of Subtitle U 421 are met, and Subtitle C 703  
13 for the parking are met as demonstrated in our report.  
14 Therefore the proposal would be in harmony in the general  
15 purpose, and intent of the zoning regulations, and map.

16           The proposed eight unit apartment building would  
17 not tend to adversely affect the use of neighborhood  
18 properties, as it would be similar to the adjacent low rise  
19 apartment buildings. The building would provide the required  
20 setbacks for the RA-1 zone, and should not cast any excessive  
21 shadows, or impede light, and air into the adjacent  
22 properties. Therefore the proposed apartments would not  
23 adversely affect the use of neighborhood properties.  
24 Therefore the Office of Planning recommends the approval of  
25 the requested special exception. Thank you Mr. Chairman, and

1 I'm available for questions.

2 BZA CHAIR HILL: Thank you. Does anyone have a  
3 question for the Office of Planning? Mr. Young, is there  
4 anyone here wishing to speak?

5 MR. YOUNG: We do not.

6 BZA CHAIR HILL: Mr. Bello, do you have any  
7 questions for the Office of Planning?

8 MR. BELLO: No Mr. Chairman.

9 BZA CHAIR HILL: Okay, unless anybody has anything  
10 else, I'm going to close the hearing on the record. All  
11 right, going to close the hearing on the record. Mr. Bello  
12 goodbye, Mr. Ali goodbye. Ms. Brown-Roberts goodbye. Man,  
13 I keep talking about this, but I miss in person, I really  
14 miss in person, I don't know when it's going to happen, I  
15 don't like this. I don't like this video thing anymore.  
16 Okay, I can start the discussion. I think DDOT wants them  
17 to close the curb cut, it makes it pretty hard to provide the  
18 parking.

19 And I thought that the applicant, as well as the  
20 Office of Planning's analysis for how they're meeting the  
21 criteria, I'm comfortable with. They're in between two  
22 apartment buildings now, right? One apartment building is  
23 a little taller than the other, but they're brand new  
24 apartments, and it looks like there'll be a brand new, nice  
25 apartment building. So, I don't really have a problem with

1 the criteria being met. I'm going to be voting in favor.  
2 Commissioner Shapiro?

3 COMMISSIONER SHAPIRO: Thank you Mr. Chair, I  
4 concur. I think if you look at section 703 to 703.2(b),  
5 they're well served by transit, 703.2(h), there's no  
6 highlighted curb cuts being eliminated, they're meeting the  
7 criteria quite clearly to grant the relief. In terms of the  
8 affordable housing, it's under ten units, and there's no  
9 habitable penthouse, so I certainly give great weight to the  
10 ANC, but I think this is ripe for an approval Mr. Chair, I'll  
11 leave it at that.

12 BZA CHAIR HILL: Thank you, Mr. Smith?

13 MEMBER SMITH: I concur with both of your analysis  
14 on this particular project. Specifically the sections that  
15 you site, Mr. Shapiro, and the reasoning why we can approve  
16 the request for special exception, and given that DDOT does  
17 want that curb cut closed, so it does make it difficult to  
18 provide apartments unless you get an easement from the  
19 apartment building behind it, which is technically  
20 obtainable. So, with that I feel like this is a fairly  
21 straight forward application.

22 The apartment building is roughly the same size,  
23 and character of the apartment buildings surrounding this  
24 proposal, so with that I'm giving OP's staff report, and  
25 analysis great weight, I would support the application.

1 BZA CHAIR HILL: Thank you. Vice Chair John?

2 VICE CHAIRPERSON JOHN: Thank you Mr. Chairman,  
3 I think the application is fairly straight forward as you  
4 said, if DDOT won't allow a curb cut, you can't really  
5 provide parking on site. And I also agree it's unfortunate  
6 that the ANC's requesting two affordable units, because the  
7 applicant is not able to provide parking, so I'm in support  
8 of the application.

9 BZA CHAIR HILL: Thank you. Mr. Blake?

10 MEMBER BLAKE: Yeah, I think the proposal is  
11 consistent with the new residential development standards.  
12 OP recommends approval for both special exceptions, and DDOT  
13 has no objections, and doesn't require a TEM plan with its  
14 application. The ANC's opposition, as Ms. John pointed out,  
15 is that it was unnecessary with two units. I would note that  
16 the initial application did actually have three parking  
17 spaces provided, which was reduced to requirement because of  
18 proximity to the transportation to a lower number, which  
19 ultimately was not required because of the curb cut from  
20 DDOT.

21 So, I cannot imagine how you would provide more  
22 parking, and they actually made an effort at some point to  
23 do that. So, I feel comfortable supporting this.

24 BZA CHAIR HILL: Okay, thank you Mr. Blake. All  
25 right, I'm going to make a motion to approve application

1 number 20454 as captioned, and read by the secretary, and ask  
2 for a second. Ms. John?

3 VICE CHAIRPERSON JOHN: Second.

4 BZA CHAIR HILL: Motion made, and seconded, Mr.  
5 Moy, could you take the roll call?

6 MR. MOY: Yes, thank you Mr. Chairman. When I  
7 call each of your names, if you would please respond to a  
8 yes, no, or abstain to the motion made by Chairman Hill to  
9 approve the application for the relief requested, the motion  
10 was seconded by Vice Chair John. Zoning Commissioner Peter  
11 Shapiro?

12 COMMISSIONER SHAPIRO: I vote yes.

13 MR. MOY: Mr. Smith?

14 MEMBER SMITH: Yes.

15 MR. MOY: Mr. Blake?

16 MEMBER BLAKE: Yes.

17 MR. MOY: Vice Chair John?

18 VICE CHAIRPERSON JOHN: Yes.

19 MR. MOY: Chairman Hill?

20 BZA CHAIR HILL: Yes.

21 MR. MOY: Then staff would record the vote as five  
22 to zero to zero, and this is on the motion made by Chairman  
23 Hill to approve, seconded by vice chair John. Also in  
24 support of the motion to approve is Zoning Commissioner Peter  
25 Shapiro, Mr. Smith, Mr. Blake, Vice Chair John, and Chairman

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1 Hill. The motion carries sir, on the vote of five to zero  
2 to zero.

3 BZA CHAIR HILL: Okay, great, thank you Mr. Moy.  
4 For our fellow board members, there is one more application,  
5 and I think it's a postponement request, and then we're going  
6 to have Chairman Hood with us. So, if we could, can we just  
7 go ahead, and do the postponement, then we'll take a break,  
8 and then bring in Chairman Hood. So, Mr. Moy, if you could  
9 please go ahead, and call our next case?

10 MR. MOY: This would be case Application No. 20492  
11 of 5116 PSRV, LLC. This application is before the board for  
12 special exception under the new residential development  
13 provisions of Subtitle U Section 421.1, an area variance from  
14 the side yard requirements, Subtitle F Section 306.1, this  
15 would raise the existing building, and construct a new  
16 detached three story 16 unit residential building with  
17 cellar, and penthouse in the RA-1 zone. Property is located  
18 at 2405 Alabama Avenue, Southeast. PAR, or rather parcel  
19 02210066, and as you noted Mr. Chairman, the applicant has  
20 filed a motion for postponement.

21 BZA CHAIR HILL: Great. Let's see, Mr. Sullivan,  
22 are you there?

23 MR. SULLIVAN: Yes, I'm here.

24 BZA CHAIR HILL: could you go ahead, and introduce  
25 yourself for the record please?

1 MR. SULLIVAN: Sure. Marty Sullivan, with  
2 Sullivan and Barros for the applicant.

3 BZA CHAIR HILL: Okay Mr. Sullivan, why do you  
4 need a postponement?

5 MR. SULLIVAN: Our parking that we provide on the  
6 property is dependent on an easement agreement, which it  
7 looked like was in place when we first filed the application,  
8 and further title research found out there's some issues with  
9 that. So, we're working with the neighbor, who is the  
10 grantor of that easement to fix that situation. Basically  
11 we need a new easement, and the neighbor is elderly, and it's  
12 taking awhile to get in touch with them, but I understand  
13 we're in touch with them now, and that process has begun to  
14 move forward. But we want to try to resolve that easement  
15 issue first.

16 BZA CHAIR HILL: Okay, great, thank you Mr.  
17 Sullivan. I don't have a problem with the postponement unless  
18 my fellow department members do, and if so, raise your hand.  
19 Mr. Moy, I think we kind of talked about this a little bit,  
20 we said that February 16th was available?

21 MR. MOY: Yes sir.

22 BZA CHAIR HILL: Okay, let's go ahead, and  
23 postpone this to February 16th, and we'll be back. Mr.  
24 Sullivan, thank you very much. All right, I'm going close  
25 the hearing, and the record until February 16th. Mr. Young,

1 if you could excuse everyone, my fellow board members, we're  
2 going to lose Commissioner Shapiro, we'll come back with  
3 Chairman Hood. Sure Mr. Smith. Okay.

4 COMMISSIONER SHAPIRO: He's waving to me, I'll be  
5 back in a few minutes.

6 BZA CHAIR HILL: Okay, yes, that's a goodbye,  
7 okay, all right. And then let's see, so it's 11:26, I don't  
8 know, let's take ten minutes, see what happens, okay.

9 (Whereupon, the above-entitled matter went off the  
10 record at 11:26 a.m. and resumed at 11:50 a.m.)

11 MR. MOY: The Board is back in its hearing session  
12 after a quick break. And the time is at or about 11:50 a.m.

13 The next case before the Board is Application No.  
14 20476 of District Restoration Company, LLC. This application  
15 is before the Board for Special Exception from the minimum  
16 lot area requirements of Subtitle E, Section 201.4. This  
17 would subdivide property into two record lots, retain an  
18 existing single-family rowhouse, and construct a new,  
19 detached, 3-story flat for two families with cellar in the  
20 RF-1 Zone. The property is located at 4107 New Hampshire  
21 Avenue, N.W., Square 3228, Lot 5.

22 As the Board will recall, you last heard this on  
23 October -- or more recently, I should say, on October 6th,  
24 2021, where the Board reopened the record, scheduled to  
25 henceforth continue the public hearing to address certain



1 items. And Zoning Commission Chair Anthony Hood is  
2 participating.

3 BZA CHAIR HILL: Okay, great.

4 Mr. Cross, can you hear me?

5 (No audible response.)

6 MR. MOY: Mr. Chairman, while you're waiting, I  
7 should add that the applicant had requested a 1-week  
8 extension to make a filing of revised documents because he  
9 needed more time. That's in Exhibit 69.

10 BZA CHAIR HILL: Got it.

11 Mr. Dungan, can you hear me?

12 MR. DUNGAN: Yes. Sorry.

13 BZA CHAIR HILL: Can you introduce yourself for the  
14 record, please.

15 MR. DUNGAN: Yes. My name is Adrian Dungan, and  
16 I am the owner of District Restoration and the property at  
17 question.

18 BZA CHAIR HILL: Okay. Mr. Cross, can you hear me?

19 (No audible response.)

20 MR. MOY: Also, Mr. Chairman, while you're waiting  
21 for Mr. Cross, submitted late and not in the record are the  
22 updated plans, as well as the clearly updated streetscape  
23 plan.

24 MR. LEE: This is Matt Lee. I'm Mr. Cross'  
25 employee. He's dealing with other issues, but he should be

1 on shortly.

2 (Pause.)

3 BZA CHAIR HILL: Is that Mr. Cross?

4 MR. CROSS: Yes. Hey, guys. Sorry. It seemed  
5 like my, my application was locked up. I didn't have the  
6 ability to turn on my mike or anything. But I'm here now.  
7 Appreciate the patience.

8 BZA CHAIR HILL: Okay, Mr. Cross. Could you  
9 introduce yourself for the record, please?

10 MR. CROSS: Yes. Robert Michael Cross, architect  
11 of record on this. I'm joined here by Matthew Lee, project  
12 architect. Thank you.

13 BZA CHAIR HILL: Okay. Mr. Cross, you have some  
14 filing things that you wanted in. Is that correct?

15 MR. CROSS: I think the filing issue is we  
16 submitted a PowerPoint yesterday evening. It's the same  
17 materials as provided, I believe, a week ago. The rendering  
18 quality has been improved. And the slides have been shuffled  
19 into a different order.

20 BZA CHAIR HILL: Okay. Are they in the record now,  
21 or you do not know?

22 MR. CROSS: Yes. I believe they're in the record  
23 now.

24 BZA CHAIR HILL: Is it Exhibit 71?

25 MR. CROSS: I'll have to pull it up.

1 BZA CHAIR HILL: Okay.

2 VICE CHAIRPERSON JOHN: Mr. Chairman, I don't see  
3 anything in the record from yesterday from Mr. Cross.

4 BZA CHAIR HILL: Yeah, I got something 10/20.  
5 Yeah, so they're not in there yet.

6 So, unless the Board has any issues, I want to see  
7 whatever the latest PowerPoint is. And so I'm going to go  
8 ahead and allow it into the record, unless somebody has an  
9 issue, and then raise your hand.

10 All right, can staff please go ahead and load the  
11 PowerPoint into the record.

12 MR. MOY: Yes, sir. Thank you, sir.

13 BZA CHAIR HILL: Thank you.

14 Mr. Young, do you have the PowerPoint?

15 MR. YOUNG: I do not.

16 BZA CHAIR HILL: Okay. Well, then let's wait.

17 So, while we're waiting, Mr. Cross, I think, did  
18 you introduce yourself for the record? No? You did. Okay.

19 MR. CROSS: I did.

20 BZA CHAIR HILL: And to clarify for Mr. Young that  
21 the presentation is a PDF technically, not a PowerPoint  
22 slides.

23 MR. YOUNG: Okay. I still don't think it's in  
24 there.

25 MR. CROSS: It may be Exhibit No. 77.

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1 BZA CHAIR HILL: Okay, that just popped in, if it  
2 is.

3 MR. CROSS: Okay.

4 BZA CHAIR HILL: So. Okay, there were go.

5 All right. Okay. So, Mr. Cross, I mean, we've  
6 been here a lot with this. And so, if you want to go ahead  
7 and walk us through your presentation, you know, what has  
8 happened since the last time you were here; why you still  
9 believe you are meeting the requirements for us to grant the  
10 relief requested; and then we'll hear from OP and work our  
11 way through the case.

12 And I've put 15 minutes on the clock so I know  
13 where we are. And you can begin whenever you like.

14 MR. CROSS: Yes, I appreciate that.

15 If Mr. Young could pull up Exhibit 77. It's right  
16 there on the cover page.

17 I appreciate you guys, the Board's continued  
18 consideration of this. This application is seeking a special  
19 exception from the lot area requirement under E 201.4, to  
20 permit a 1,500 square foot lot in the RF-1 Zone by including  
21 an IZ unit.

22 We are here today, as you're aware, as a  
23 continuation of the case that was originally heard on 7/14.

24 We then had as second hearing on 9/22.

25 And the decision hearing was recently on 10/6.

1 At that time, the case was opened back up for, for a  
2 continued hearing at the conclusion of the Board's  
3 deliberation.

4 We were present for that deliberation on 10/6.  
5 We heard the Board's concerns. And it's our understanding  
6 that they generally fall into the following categories:

7 Concerns about height;

8 Concerns about character, scale, and patterns with  
9 the neighborhood;

10 And concerns about the extent of the shadowing on  
11 adjacent properties.

12 Next slide, please.

13 Subsequently, we have made some revisions to the  
14 plans. We have reduced the project by almost 3 feet.

15 We are now only about 4 feet taller than the two  
16 precedent properties that we have referenced in previous  
17 applications -- or previous presentations.

18 We are no taller than the property to the west.

19 If you'd go to the next slide.

20 This, this slide shows the elevations of all of  
21 the properties along the block as obtained through several  
22 different DC websites. The building to the west you can see  
23 has a parapet wall that is roughly 34 feet tall. I believe  
24 that our building is coming in right around 32 feet.

25 The buildings to the east here is an unimproved

1 row. They are all still at the original 28 feet height.

2           Before we leave this slide, I would point out that  
3 there are two structures that have been expanded to three  
4 stories: one, across the street, which is just under the 35-  
5 foot mark; and one on the subject property, the original  
6 property, which is, again, just under that 35-foot height.

7           Next slide, please.

8           This is showing the mansard that we've added to  
9 further reduce the height of the building, as well as reduce  
10 the perceived mass along the sidewalk and reduce the shadows.

11           Next slide.

12           By adding that additional, that mansard style we,  
13 we have aligned the cornice of the mansard with the cornices  
14 of the other mansards on the row of properties to the east.  
15 Obviously, the mansard is similar in style to that of the row  
16 to the east, and it is now effectively only a half story  
17 taller than the original structures on the row.

18           Next slide, please.

19           We believe that the structure is virtually  
20 identical to any of the structures on this row, should they  
21 choose to expand to the matter-of-right three stories.

22           Again, as stated, the mansard officially reduces  
23 the height and massing due to a tapering of the uppermost  
24 floor.

25           We've added a broken massing to the front facade

1 which emulates the block of row houses, and transitioned our  
2 design to the vertical facade which is found on the building  
3 to the west.

4 And the proposed structure would be roughly 2 feet  
5 shorter than the vertical facade on the existing property to  
6 the west, including its parapet wall which faces Taylor  
7 Street, which we face with this property.

8 Next slide.

9 These revisions since our last submission have  
10 reduced the shadowing by as much as 22 percent. This, this  
11 slide shows the shadows at the equinox. There are three  
12 different shadows being shown at each diagram.

13 The gray is the matter-of-right shadow produced  
14 by the accessory building that could be built on this  
15 property if it was not subdivided.

16 The red outline is the extent of the shadows from  
17 our previous application that was presented on 9/22 and  
18 considered on 10/6.

19 And then the dark red solid shadow is the shadows  
20 currently being produced by the revised plan presented here  
21 today.

22 Next slide, please.

23 Again, you can see that all of those shadows have  
24 been reduced by a certain percentage at all times of the day.  
25 That is, both the reduction in height, the tapering of the

1 uppermost story, and the opening up of the rear balcony in  
2 the rear corner, effectively reducing the overall mass.

3 Next slide.

4 Again, the winter shadows have been reduced  
5 varying degrees. In fact, I'll point out that the 9:00 a.m.  
6 shadow study actually eliminates all shadows that we, we  
7 anticipate here being added in plan.

8 Next. Next slide.

9 We appreciate the Board's continued consideration  
10 of this application, and hope these further revisions  
11 reaffirm our client's commitment to working to accommodate  
12 the concerns of both the ANC as well as the BZA, while  
13 providing an additional affordable housing unit to the  
14 District.

15 We'd like to reiterate that we are seeking relief  
16 only for creating a lot box, less than 1,800 square feet,  
17 nothing further.

18 We meet the requirements of this relief by  
19 providing the IZ unit.

20 Next slide, please.

21 As you may recall, there are virtually no family-  
22 size completionary zoning units available in this family-  
23 friendly residential area. Instead, most units available are  
24 smaller, 1 or 2 bedroom units, and they are located on the  
25 commercial corridor.



1           Next slide, please.

2           Additionally, as presented previously, while this  
3 lot does not meet the minimum lot size for this zone, the  
4 majority of lots in this square do not meet that standard  
5 either. This slide, as you might recall, all the lots shown  
6 in orange or red are below that 1,800 square foot standard.  
7 All the lots in red are 1,500 square feet or less, similar  
8 to ours.

9           Next slide, please.

10          Before going to the BZA, we addressed the ANC's  
11 concerns by eliminating a partial parapet at the front corner  
12 of the property, effectively reducing the structure by 4 feet  
13 in height.

14          We agreed to OP's request by adding a traditional  
15 masonry water table at the first floor.

16          And we revised the entry awning to a style more  
17 typical of the neighborhood.

18          After our first BZA hearing we revised our plans  
19 further to address the ANC's concerns by offering an IZ unit  
20 at 60 percent AMI, instead of the 80 percent AMI, to respond  
21 to their concern that the units were not easily affordable.

22          After the first BZA hearing -- Sorry. Which  
23 brings us today to what we have here.

24          Next slide, please.

25          Sorry. Just I'll leave it, I'll leave it here for

1 a second.

2           This is the evolution of those plans that I was  
3 describing in all the additions from left to right, the right  
4 being the submission here today.

5           I would want to note also, down at the base of  
6 this we have a diagram that shows the massing of the proposed  
7 project along with those of the adjacent properties that  
8 front Taylor Street. In that massing here we have two other  
9 outlines: the hatched outline showing the matter of right  
10 accessory to our building; and the black outline above being  
11 the original proposed structure; the dark gray being what we  
12 have here today, again shorter than the buildings to the  
13 west, and a half story taller than the buildings to the east.

14           BZA CHAIR HILL: Hey, Mr. Cross.

15           MR. CROSS: Yes, sir?

16           BZA CHAIR HILL: Can you tell me what you guys  
17 think of the matter-of-right, what you guys think gives you  
18 the matter-of-right?

19           MR. CROSS: Sure. The matter-of-right here I can  
20 -- this has been sort of a confusing piece because our  
21 structure, as presented, is matter-of-right as it conforms  
22 with all of the massing requirements of the RF-1 Zone for a  
23 2-family flat.

24           The relief we're seeking is to subdivide the lot.  
25 And so, the Board has suggested that they consider the

1 matter-of-right to actually be what could be built there  
2 without subdivision. And, therefore, what we're showing here  
3 is the matter-of-right accessory building that could be built  
4 at the rear of the existing lot.

5 And that is shown to be 22 feet with a 4-foot  
6 parapet based on the building height measuring point of the  
7 property.

8 BZA CHAIR HILL: Okay. No, I appreciate it. Okay,  
9 thank you.

10 MR. CROSS: And so, that brings us to what we have  
11 here today, a project that has been reduced nearly 3 feet  
12 from the previous proposal. We have added a mansard style  
13 third story. We've cut out the northeast corner of the third  
14 floor for more open outdoor space and reduced shadows. And  
15 all of these strategies have reduced the shadows by as much  
16 as 22 percent.

17 Next slide, please.

18 Again, we appreciate the Board's continued  
19 consideration of this application which infills an unbuilt  
20 section of land that fronts on Taylor Street. It adds two  
21 family-sized units, one of which will be offered at the IZ  
22 at the 60 percent AMI level.

23 We hope that these further revisions reaffirm our  
24 client's commitment to working to accommodate your concerns.

25 As the Board duly noted in their deliberation,

1 there will be impacts by any proposed development. And  
2 that's even with a matter-of-right solution. And we can only  
3 hope that our efforts have lessened those impacts.

4 We welcome the Board's feedback on our later  
5 revisions, and whether they have sufficiently addressed the  
6 Board's concerns.

7 Thank you.

8 BZA CHAIR HILL: Okay, great. Let's see. Mr.  
9 Cross, before you jump out again, Mr. Young, can you just  
10 point out again, I was going through the slides there, can  
11 you show me which one's the IZ unit?

12 MR. CROSS: Sure. You're in Exhibit 77?

13 BZA CHAIR HILL: Yes.

14 MR. CROSS: So, in Exhibit 77 you'll find the plans  
15 outside of the set that we presented. They are -- 77 may not  
16 actually --

17 BZA CHAIR HILL: Did you try 18?

18 MR. CROSS: Oh, yes. My apologies. You're exactly  
19 right. So --

20 BZA CHAIR HILL: Yeah, there we go. We got it.

21 MR. CROSS: The IZ unit is the big unit seen in No.  
22 1, off to the right. And it goes down to our plan No. 0,  
23 which is in the cellar. It's a multi-floor unit.

24 BZA CHAIR HILL: Three-bedroom den. The three-  
25 bedroom den?

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1 MR. CROSS: That's correct.

2 BZA CHAIR HILL: Okay. All right. Okay.

3 Does the Board have any questions for the  
4 applicant while the slide deck is up? And if so, just speak  
5 up.

6 You can drop the slide deck, Mr. Young.

7 MEMBER BLAKE: I have a question.

8 BZA CHAIR HILL: Sure. Mr. Blake.

9 MEMBER BLAKE: Sure. Mr. Cross, can you explain  
10 to me how you calculated the 22 percent reduction in  
11 shadowing? Just give me a rough idea of how you approached  
12 that.

13 MR. CROSS: Yeah. So, I, I suggested it was up to  
14 22 percent. As you saw in those exhibits, one of them  
15 actually reduces the shadows 100 percent.

16 The method of calculation per time was the  
17 percentage of area that was, was reduced by the overall net  
18 area shadow cover.

19 Does that make sense?

20 MEMBER BLAKE: Yeah. So, but, so the 22 percent  
21 is more like an overall average kind of calculation is what  
22 you're saying?

23 MR. CROSS: I don't know what the average is. I  
24 guess we could work that up. I was, I was suggesting by as  
25 much as. At most of those different times there were, for

1 instance, at the equinox, at 9:00 a.m. there was virtually  
2 no reduction. By noon it was 14 percent. At 3:00 p.m. it  
3 was 22.5 percent. At 5:00 p.m. it was 13 percent.

4 A similar pattern for these others where the high  
5 of those reductions, discounting the 100 percent, is around  
6 22. But they range somewhere, again, there was one that we  
7 have a zero, but the normal range is somewhere between 7 and  
8 22 percent at all of those times based on observations.

9 MEMBER BLAKE: Okay. And as you looked at the  
10 matter-of-right option, you'd included a 4-foot parapet wall.  
11 Is that right? When you did the matter-of-right comparison  
12 for the --

13 MR. CROSS: Yes, sir.

14 MEMBER BLAKE: So, it's basically a 20, what, 26  
15 foot type comparison in the matter-of-right?

16 MEMBER BLAKE: That's right. Our understanding is  
17 a 22 feet parapet wall is allowed and does not contribute to  
18 the building height. And it is based on the building height  
19 measuring point for that property.

20 MEMBER BLAKE: Okay. But it would contribute to  
21 the shadowing. So, it will give you an indication of a  
22 shadow that was a little bit higher, so, more significant  
23 than it would be otherwise?

24 MR. CROSS: Yes. Yes.

25 MEMBER BLAKE: All right. And the -- Okay. Also,

1 when you looked at the property itself, the interior, it  
2 looks like you were able to make these adjustments by  
3 changing, reconfiguring but actually without actually  
4 changing the size. So, that you maintained the same exact  
5 interior strictly. Is that right?

6 MR. CROSS: I believe so. The uppermost floor was  
7 reduced slightly because of the mansard, as well as the rear  
8 balcony. So there, I would say that there probably is some  
9 reduction in the actual floor area, but negligible.

10 MEMBER BLAKE: Okay. Thank you.

11 BZA CHAIR HILL: Okay, thank you.

12 Anyone else for the applicant? Chairman Hood?

13 ZC CHAIR HOOD: Yes. Thank you, Mr. Chairman.

14 Mr. Cross, as you know, and you heard a lot of it  
15 on BZA that I think they require it as well -- I'm sure  
16 somebody will correct me if not, but I believe they are --  
17 the racial equity lens. I can't understand. Can you speak  
18 to why the IZ unit is located where it is from a racial  
19 equity lens standpoint?

20 MR. CROSS: Located in the community where it is,  
21 or within the building where it is?

22 ZC CHAIR HOOD: Within the building, the location  
23 where you are. And I want you to kind of tie that into the  
24 racial equity. I'm not going to help you with it. I can  
25 probably do it, but I want you to do it. You're the

1 applicant.

2 MR. CROSS: I don't know, I don't know if I, I can  
3 speak to that. I don't know if it was designed with any  
4 particular race in mind.

5 ZC CHAIR HOOD: No, no. Racial equity. Racial  
6 equity is legislation passed by the council which boards and  
7 commissions and all agencies within the independent District  
8 Government are supposed to look at. It has nothing to do  
9 with color. Racial equity is leveling the playing field.

10 So, what I would suggest, and this is just me  
11 being helpful to you, but you've got to understand,  
12 especially if you're going to be presenting in front of the  
13 Board and the Commission -- I don't know if you're coming  
14 before the Commission -- but you understand what the statute  
15 talks about racial equity. It has nothing to do with race,  
16 it has to do with leveling the playing field for folks who  
17 are disadvantaged.

18 So, the IZ unit, as you mentioned, I think the ANC  
19 is right on top. They had you go from 80 percent to 60  
20 percent.

21 But let me ask the question this way as you do  
22 your homework later on. Why not less than 60 percent?  
23 What's the tipping point in being able to provide this  
24 development?

25 MR. CROSS: I, again, I don't know if I can speak



1 to that as the designer. I think that's more of the  
2 economics of the building.

3 I can speak to the requirements of the relief here  
4 are for IZ, which would be satisfied by 80 percent. They  
5 have at least at the 60, I think the client has pointed out  
6 that when you have a building that is only two units, so 50  
7 percent of it is an IZ unit, the economics to fund the  
8 construction is very hard to make that up when you only have  
9 one market rate unit to make up for the cost of construction  
10 of both units.

11 ZC CHAIR HOOD: So, maybe, Mr. Cross, I'm asking  
12 the wrong person the question. Maybe I should be asking Mr.  
13 Dungan the question.

14 Mr. Dungan, are you, are you the applicant?

15 MR. DUNGAN: Yes, sir, Commissioner, the applicant.

16 ZC CHAIR HOOD: So, you heard my comments. Can  
17 you, can you help me understand the racial equity component  
18 of the housing unit? Or why we couldn't vote, why it  
19 couldn't be less than -- You all actually have the answers  
20 but you're just not giving it to me. So, why it can't be  
21 less than 60 percent of the MFI?

22 MR. DUNGAN: So, going less than 60 percent for the  
23 MFI would make the project very difficult to get financing  
24 for it. Because the banks want a pro forma that doesn't need  
25 this friendly margin when they both got funded. So, to be

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1 able to do the project with the lender just required us to  
2 do. That is the reason.

3 As it relates to your question about equity, I  
4 think that I'm glad you mentioned it because for me I've only  
5 got two projects and both are RF-1 and both have inclusionary  
6 zoning in it. And I believe that all areas of the city  
7 should work to contribute to the affordable housing stock.  
8 And at both the ANC level, I believe the testimony provided  
9 to the BZA there were neighbors who say that they want us to  
10 take our affordable housing to Ward 7 and to Ward 8.

11 So, I would be living with my family in Petworth,  
12 in this neighborhood in a 4-unit where one of the units is  
13 an inclusionary zoning unit. So, I am committed to trying  
14 to do that with many of my small RF-1 projects.

15 ZC CHAIR HOOD: Okay. I thank you both for your  
16 questions. And I really appreciate the acknowledgment, and  
17 I believe -- Let me just back up. I believe the tipping  
18 point is less than 60 percent of MFI, but that's what you're  
19 proposing. And at least it's come far, it's come down from  
20 80 percent. But I think the acknowledgment of knowing that  
21 there's going to be an adverse impact in trying to procure  
22 that I think is very beneficial to some point.

23 So, but I'll wait to hear what others have to say.

24 Thank you, Mr. Chairman. Thank you both for your  
25 answers.

1 BZA CHAIR HILL: Thank you, Chairman Hood.

2 Anyone else for the applicant?

3 (No audible response.)

4 BZA CHAIR HILL: I'm going to turn back to the  
5 Office of Planning again.

6 MS. VITALE: Good afternoon, Mr. Chair and members  
7 of the Board. Elisa Vitale with the Office of Planning.

8 The applicant has not modified in this requested  
9 relief, and OP continues to support the special exception  
10 request for a voluntary inclusionary development with a 1,500  
11 square foot lot in the RF-1 Zone.

12 As discussed, the original proposal met all the  
13 relevant development standards for the RF-1 Zone. With the  
14 exception of the reduced lot area, the proposal continues to  
15 meet all development standards. And OP continues to find  
16 that the proposal meets the S901.2 general special exception  
17 standard. And finds that the provision of two new dwelling  
18 units with one IZ unit in the RF-1 Zone meets the general  
19 purpose and intent of the zoning regulation.

20 And the new building would not tend to adversely  
21 affect the use of neighboring properties in accordance with  
22 the zoning regulations and zoning map.

23 This concludes my report. And I'm happy to answer  
24 any questions. Thank you.

25 BZA CHAIR HILL: Thank you, Ms. Vitale.

1           Let's see, does anybody have any questions for the  
2 Office of Planning?

3           Does the applicant have any questions for the  
4 Office of Planning?

5           MR. CROSS: I do not, no.

6           BZA CHAIR HILL: All right. Mr. Young, is there  
7 anyone here wishing to speak?

8           MR. YOUNG: Yes, we do.

9           BZA CHAIR HILL: Could you please bring the witness  
10 in.

11          MS. DOMINGUEZ: Hi. Alicia Dominguez.

12          BZA CHAIR HILL: Hi. Ms. Dominguez? Dominguez?

13          MS. DOMINGUEZ: That's right.

14          BZA CHAIR HILL: Could you introduce yourself for  
15 the record, please?

16          MS. DOMINGUEZ: Absolutely. My name is Alicia  
17 Dominguez. And I'm the owner at 4101 New Hampshire Avenue.  
18 It's the corner unit of New Hampshire and Taylor.

19          BZA CHAIR HILL: Okay. And, Ms. Dominguez, we have  
20 your most recent submittal into the record, just so you know.  
21 And if anybody has -- Oh, no.

22          MS. DOMINGUEZ: I believe that's from Ms. Marshall.

23          BZA CHAIR HILL: All right, Ms. Marshall.

24          So, just so the Board knows, and I've reviewed  
25 that one as well, I'm going to allow that into the record.

1 So, if we can go ahead and do that. And if anybody has any  
2 questions, they can raise their hand.

3 Any of the staff, any of the Board members? No?  
4 Okay, great.

5 Ms. Dominguez, you'll have 3 minutes to give your  
6 testimony. And you can begin whenever you like.

7 MS. DOMINGUEZ: If we could before starting, is it  
8 possible to pull up Exhibit No. 64? It's the ANC comments  
9 after the last proposal.

10 BZA CHAIR HILL: Sure. Mr. Young, can you pull  
11 that up?

12 MS. DOMINGUEZ: And if you could, please, Mr.  
13 Young, on page 2 is where I'd like to have the screen shown,  
14 please.

15 BZA CHAIR HILL: Okay. Just for the record, I  
16 mean, Ms. Dominguez, I mean, you're not representing the ANC,  
17 you're just using this as something to articulate what you're  
18 trying to talk about?

19 MS. DOMINGUEZ: That's exactly right. Yeah, just  
20 a visual. That's right.

21 BZA CHAIR HILL: Okay, great.

22 Why don't we give Mr. Young a moment.

23 MS. DOMINGUEZ: Thank you.

24 BZA CHAIR HILL: You're welcome.

25 MS. DOMINGUEZ: Great. Yes, that visual on page

1 2. Perfect. Thank you, Mr. Young.

2           So, as I mentioned, I'm at 4101 New Hampshire  
3 Avenue. And the proposed condos would be directly east of  
4 my property. I've spoken with this Board previously about  
5 my concerns about the impact of light, shadows, as well as  
6 privacy, and the character in comparison to other homes on  
7 the proper -- on the street.

8           I have to say, after the last hearing I was  
9 actually pretty optimistic about a potential compromise. Or,  
10 I was interested to see what the changes were going to be.  
11 I was looking on the website to see what they were going to  
12 plan. But I was disappointed that there has been no contact  
13 by the applicant to the ANC or affected neighbors.

14           I talked to my ANC commission and said, oh, let  
15 us know when you hear from him. Really interested to hear  
16 what they've come up with. There's been no dialog, no  
17 interest in actual dialog and communication with the  
18 neighbors and the ANC.

19           For the new plans there's no meaningful  
20 difference. Mr. Cross himself said that there is a  
21 negligible reduction in the gross area.

22           Similarly, the difference in height is 1 foot and  
23 9 inches. They've not made any real attempt to, to change  
24 the impact to the neighbors.

25           I'm thinking of the last hearing when Chairman

1 Hood joked that it was like trying to squeeze into a size 46  
2 pants when you need a size 50. And here the new plans, they  
3 might have lost a couple pounds, but there's no difference  
4 in pants size.

5           We still have a size 50 here trying to squeeze  
6 into a small lot, especially where the principal structure  
7 that you can see in this image, that big white house, has  
8 already been topped up in back. So, we have two massive,  
9 oversize properties, significantly bigger than other homes  
10 on the, on the area.

11           The main thing I want to talk about, though, is  
12 this matter-of-right issue. Mr. Cross has repeatedly said  
13 that they have a matter-of-right, the shadows that you're  
14 looking at are comparing a "matter-of-right" with their  
15 proposed plan.

16           But the matter-of-right for an accessory dwelling  
17 has certain criteria that they don't meet. Importantly, the  
18 criteria requires the owner to occupy either the principal  
19 structure or the accessory dwelling. In this case the owner  
20 has admitted in the ANC meeting -- and I'm sure he could let  
21 us know today if anything has changed -- but he's told us  
22 before that he neither lives there, nor has any intention of  
23 living there. And so, they do not have as a matter-of-right  
24 an ability even to build up an accessory dwelling unit up to  
25 that 2 feet -- or 2 story height.

1           So, what the Board should be comparing when you  
2 look at the shadows is compare the existing structure's  
3 shadows to what they're proposing, not this differential  
4 between an accessory dwelling unit that they do not have a  
5 matter-of-right to build with the proposal.

6           So, I guess I'll leave it there. I know that I  
7 have a -- there are a couple other neighbors on the call as  
8 well that are hoping to speak. I just can't underscore  
9 enough how concerned I am about the impact it's going to  
10 have, in particular to the light and the privacy, and how  
11 little the applicant has done to make any meaningful  
12 difference. They used the word "negligible."

13           And then I think there has just been some, some  
14 mischaracterizations along the way in terms of talking about  
15 matter-of-right, as well as if you look at this image here  
16 showing my property, which they described as being, you know,  
17 the tallest on the block. If you look at it, it's the  
18 original height. There's a parapet that's on the far left  
19 there, but it's actually when you're looking directly at that  
20 street, you're not looking at a block with a parapet that  
21 high.

22           I have a slopped roof that's the same original  
23 height as all the other homes on the block. So, this  
24 proposal that they're planning would be just at -- would be  
25 significantly bigger than all of the homes, including my own.



1 So, thank you all for your time. I appreciate it.

2 BZA CHAIR HILL: Okay. Thanks, Ms. Dominguez. And  
3 thank you for coming.

4 Just you're the house right next to the big house;  
5 right?

6 MS. DOMINGUEZ: No. I'm at the corner. I'm the  
7 furthest left in that image.

8 BZA CHAIR HILL: Okay, I got you. With the parapet  
9 wall. Okay.

10 MS. DOMINGUEZ: Yes.

11 So, I'm directly, directly west. And so when I'm  
12 thinking about the sun rising and you're talking about, you  
13 know, looking at a time that was 9:00 a.m., I have sun  
14 flowing into my bedroom and kitchen, which is where I spend  
15 my waking hours between sunrise and 9:00 a.m. All of that  
16 will be --

17 BZA CHAIR HILL: Okay. You're the one that's kind  
18 of, your corners are on Taylor Street also; right?

19 MS. DOMINGUEZ: Correct. That's right.

20 BZA CHAIR HILL: Okay. Okay. All right, Ms.  
21 Dominguez. And I'm sorry it's all stressful. Like I say,  
22 I mean, I'm sorry, I mean I'm just sorry it's stressful.

23 Let's see. Does anybody have any questions for  
24 Ms. Dominguez? Commissioner Hood?

25 ZC CHAIR HOOD: I'm very sorry to hear Ms.

1 Dominguez mention that there has been no conversations. I  
2 think to me, in my years of doing this, when you have  
3 conversation, I meant what I said about the size 50 and  
4 trying to squeeze into a 46 when you need a 50, but and I  
5 meant that. I might have said it jokingly, but that's the  
6 way I look at it. And I still look at it that way. But I  
7 do know that whatever goals, there's going to be an impact.  
8 But we can lessen the impacts.

9           And not to have a conversation, Mr. Chairman, I  
10 think that is just totally out of character. Well, not much  
11 out of character; I don't know what the character is. But  
12 I just think that's totally out of scale if you want to try  
13 to come in and be a good neighbor.

14           I think you need to have a conversation. And I  
15 can tell you, once I hear that, then all, I'm all off of it.  
16 I have a problem with that when I find out. I'm thinking you  
17 could at least have a conversation. Still when you have a  
18 conversation and you still might not agree, then I think the  
19 Board can do what we need to do.

20           But when you don't have a conversation and you  
21 still don't agree, that's a problem.

22           And that's all I have to say, Mr. Chairman. Thank  
23 you.

24           BZA CHAIR HILL: Okay. Thank you, Chairman Hood.

25           Mr. Young, who else is here to speak?

1 MR. YOUNG: I have Simone Shannon and Melanie  
2 Marshall.

3 BZA CHAIR HILL: Got it.

4 Ms. Shannon, can you hear me?

5 MS. SHANNON: Yes, I can.

6 BZA CHAIR HILL: Okay, great. Could you introduce  
7 yourself for the record, please.

8 MS. SHANNON: Yeah. My name is Simone Shannon.  
9 I lived on Taylor -- I live on Taylor Street.

10 My -- you see where the alley is? I'm right at  
11 the alley on Taylor Street. I'm 517.

12 BZA CHAIR HILL: Got it.

13 MS. SHANNON: Okay.

14 BZA CHAIR HILL: Okay. Ms. Shannon, just so you  
15 know, you'll have 3 minutes to give your testimony.

16 MS. SHANNON: Okay.

17 BZA CHAIR HILL: And you can begin whenever you  
18 like.

19 MS. SHANNON: Okay. Now, the rendering that was  
20 up there, I think Ms. Dominguez was speaking on it. She  
21 lives in a house on New Hampshire.

22 BZA CHAIR HILL: Okay.

23 MS. SHANNON: So, what I'm trying to say is when  
24 the construction was built on New Hampshire, those are  
25 apartments. Okay. The trash level: ridiculous. All those

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1 six trashcans are right at my home.

2 Now, I'm going to say when his new structure is  
3 going to be built that's going to be probably another eight  
4 trashcans. Rats: terrible. Okay.

5 Now he's got that structure with all those windows  
6 looking into my bedroom, up top, and into my kitchen. I'm  
7 right there. I'm the closest to that structure. So, I'm in  
8 complete opposition.

9 I've asked them to clean where they were supposed  
10 to have some sort of parking pad there. There's always  
11 trash, sofas, all kind of stuff. Now he's building another  
12 structure? No.

13 All of those windows face my bedroom. The  
14 sunlight, just like they said, I won't get the sunlight  
15 because it comes into my home. When those structures go up,  
16 I'm going. The only sunlight I'll get probably is from the  
17 street, where the whole side of my house is exposed.

18 Parking. I'm a business owner. The parking on  
19 Taylor Street, I mean, with all of these additional units,  
20 come on. When I get home at night after I close my business  
21 where am I parking?

22 BZA CHAIR HILL: Okay. All right, Ms. Shannon, do  
23 you have anything else?

24 MS. SHANNON: No. I'm outraged at this.

25 BZA CHAIR HILL: Okay. I'm sorry.

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1 Thank you, Ms. Shannon.

2 MS. SHANNON: Thank you.

3 BZA CHAIR HILL: The next person -- Oh yeah, Mr.  
4 Moy?

5 MR. MOY: I just want to remind you, Mr. Chairman,  
6 that Ms. Shannon has written testimony that she gave orally.  
7 And my understanding is she would like to have that in the  
8 record.

9 BZA CHAIR HILL: Okay. Ms. Shannon, did you submit  
10 something into the record yet?

11 MS. SHANNON: Yes, I did.

12 BZA CHAIR HILL: Okay. Unless the Board has any  
13 issues, I'll go ahead and let Ms. Shannon's testimony be  
14 entered into the record. If you have an issue, please raise  
15 your hand.

16 Okay. If the staff could please add that into the  
17 record.

18 Ms. Marshall, can you hear me?

19 MS. MARSHALL: Yes, I can hear you.

20 BZA CHAIR HILL: Okay, great. Could you please  
21 introduce yourself for the record.

22 MS. MARSHALL: My name is Melanie Marshall. I live  
23 at 4103 New Hampshire Avenue, N.W.

24 And the proposed, as proposed, will be directly  
25 behind me.

1 BZA CHAIR HILL: Okay. Ms. Marshall, just so you  
2 know, if you could -- Oh, wait, wait. You've got 3 minutes  
3 to give your testimony. Okay?

4 MS. MARSHALL: Yes.

5 BZA CHAIR HILL: Okay. Go ahead, please.

6 MS. MARSHALL: I want to start by saying how  
7 disingenuous it has been that the applicant changed their  
8 submission and included it today so that none of us had a  
9 chance to review it. The applicant has already admitted that  
10 this project is not worth it to him if it's not going to be  
11 scaled beyond a certain point.

12 And he continues to introduce matter-of-rights  
13 incorrectly. We outlined that in our letter, original  
14 objection letter. The ANC also outlined that. Ms. Dominguez  
15 also outlined that. And the actual understanding of matter-  
16 of-rights does not apply here because he already got approval  
17 from the IZ, the Board of Planning, to improve the  
18 inclusionary zone, which he thinks trumps having matter-of-  
19 right. And it does not.

20 The exception to this is what he is seeking in  
21 order to build the project in the first place.

22 And still, this is still a massive scale. It's  
23 adverse to all of us with its impact to light. The shadow  
24 effect still remains, as well as the lack of privacy to  
25 neighbors. And it shows how a building of this size or

1 design do negative -- does negatively impact us.

2           The Board of Zoning's notice that was required to  
3 be posted in the front of 4107 has been obscured by some  
4 other sign, and it was only removed either late last night  
5 or early this morning. So, for weeks it has prevented the  
6 adjacent neighbors and anyone passing by of being informed  
7 of the public notice.

8           And as to the lot size and wanting to build on  
9 this reduced lot size, pointing out comparable properties,  
10 those properties were built over 100 years ago. This was a  
11 farm at one time. And the farm owner sold lots as they  
12 needed to have more money. So, they are odd-sized lots.  
13 They are not comparable to what he's trying to do right here  
14 at this time, especially since he has not reduced the  
15 footprint.

16           And I am only asking, please pay attention to the  
17 neighbors who signed our original letter objecting to this  
18 property and hold the developer to task. I hope that we have  
19 your support in denying this application.

20           Thank you.

21           BZA CHAIR HILL: Okay. Thanks, Ms. Marshall.

22           Okay. Does the Board have any questions?

23           Okay. Mr. Young, if you could please excuse  
24 everyone.

25           I think I got -- did I, yeah. Yeah, I got

1 everyone.

2 Okay, Mr. Young, is there anyone else?

3 MR. YOUNG: No. That's it.

4 BZA CHAIR HILL: Okay. All right. All right, does  
5 the Board have any questions?

6 Does the applicant have anything they'd like to  
7 add at the end?

8 MR. CROSS: Yeah. Just to really quickly clarify  
9 the matter-of-right accessory building, I believe that maybe  
10 the miscommunication here is the conflation of accessory  
11 building with accessory dwelling unit.

12 We are not proposing an accessory dwelling unit  
13 in our matter-of-rights that I'm asking. We are simply  
14 proposing an accessory building, which will be allowed on  
15 this site as a matter-of-right. And if the Board has  
16 concerns about that, we could open it back up to you.

17 BZA CHAIR HILL: Yeah, that's okay. Mr. Cross, and  
18 I'm not, I'm not a -- I think the way you have presented the  
19 information is understandable. I guess for kind of future,  
20 even just for us, like, when you come back again, like, there  
21 are, there are -- it is helpful, at least I'm talking about  
22 me now, it is helpful for me to see what the "matter-of-  
23 right" option is. However, there are different hoops that  
24 you have to kind of jump through to get to how that is or  
25 isn't the matter-of-right.

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1           And I'm just, you know, clarifying again, right,  
2 the matter-of-right is an accessory building where somebody  
3 has to live in the principal unit. Right?

4           Now, that's not to say -- somebody has to live in  
5 one of them, right -- and that's not to say that you couldn't  
6 necessarily do that, it's just not what you're necessarily  
7 proposing. I'm just saying that's what might have gotten --  
8 I'll let you respond -- what might have gotten a little bit  
9 confusing.

10           And then the other matter-of-right that you're  
11 speaking of is matter-of-right if we get -- if you get the  
12 relief for the IZ unit. Right? I mean, meaning for the  
13 smaller lot. The smaller lot, right?

14           So, I'm just saying there are a couple of little  
15 hoops to get to the matter-of-right presentation that maybe  
16 in the future, even when you're putting stuff before the ANC,  
17 you've got to jump through those hoops so that they also --  
18 it's understandable. I don't know.

19           But, Mr. Cross, you have something in response?

20           MR. CROSS: Yeah. And I, I do understand, you  
21 know, the matter-of-right massing of a two-family plot  
22 requires a -- has a prerequisite.

23           But I do want to further reiterate this notion  
24 between accessory building and accessory dwelling unit. And  
25 accessory building can be a garage, storage area, all that.

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1 It has no owner occupant requirement. It is the use of an  
2 accessory building as an accessory dwelling unit that would  
3 have that requirement.

4 So, what we're showing is an accessory building.  
5 It's the mass only, independent of use. And therefore, it  
6 is, it is actually matter-of-right as a garage, et cetera,  
7 as shown.

8 BZA CHAIR HILL: No, I got it. And, again, Mr.  
9 Cross, I guess we can talk a little bit more. Like, I guess  
10 sometimes when I get caught up even in that -- and I'm,  
11 again, not discounting the way that it's being presented --  
12 is that nobody's going to build back there, right, unless it  
13 is -- you wouldn't build a garage that height, right, or an  
14 accessory building that height, you know. At least, I don't  
15 know how, financially, it would be feasible.

16 But and in a way it doesn't -- I'm not, I'm not  
17 disagreeing with anything you've said. I'm just saying  
18 that's how this matter-of-right stuff sometimes gets a little  
19 bit -- there are some hoops that you have to clarify. That's  
20 all I'm saying.

21 MR. CROSS: Yeah. And if allowed, Matthew Lee  
22 might be able to chime in on the correspondence that we have  
23 had with the ANC in the last few weeks.

24 BZA CHAIR HILL: Sure. And I'll get the property  
25 owner there in a minute.

1 Go ahead, Mr. Lee.

2 MR. LEE: Yes, thank you. I just want to identify  
3 I know Mr. Hood, Chairperson Hood identified a concern that  
4 there was no community outreach.

5 We have been in contact with Botstein,  
6 Commissioner Botstein, a number of times, one of which we  
7 requested whether or not we could get on the ANC's docket,  
8 and whether or not to communicate with the neighbors. She  
9 has kind of been acting as liaison for us between the  
10 applicant and the community. And in a correspondence with  
11 her she identified that we wouldn't be able to get -- meet  
12 with the ANC, but that she said, identified that she would  
13 share our new revisions and changes and, for instance, go and  
14 meet with the ANC.

15 Additionally, she said after presenting some  
16 materials -- this was back in September 2 -- to neighbors,  
17 that they had not changed their opinion about the project.

18 And one of the things that an SMD meeting, I have  
19 notes identifying that, essentially that while we were trying  
20 to work with height, and size, and style we were told in not  
21 so many words that while they appreciated us trying to work  
22 with them, that there was really nothing we could do to  
23 change their minds.

24 So, we have done outreach. And kind of not had  
25 a positive experience though, you know, understand everyone's

1 point. But just wanted to make sure that everyone here  
2 listening is aware that we have done our best to do our due  
3 diligence.

4 BZA CHAIR HILL: Okay. Thank you, Mr. Lee.

5 Let's see. Since there was a little bit of  
6 rebuttal here, I think, Mr. Dungan, you said you have  
7 something to add?

8 MR. DUNGAN: Yes. Thank you for your time.

9 The last phone call and communication was from  
10 myself to Melanie, not the other way around. And Melanie had  
11 to go. And I said, call me back any time with any questions.

12 Also ran into Melanie after the second --

13 BZA CHAIR HILL: I'm sorry. What's the person's  
14 last name again? I'm trying to remember who she is.

15 MR. DUNGAN: Melanie. Melanie Marshall who is the  
16 immediately adjacent neighbor.

17 BZA CHAIR HILL: Okay, Ms. Marshall. Thank you.  
18 So, Ms. Marshall, okay.

19 MR. DUNGAN: So, Melanie, if you're listening, that  
20 offer stands: call me back any time if you want to discuss  
21 things.

22 I also saw Melanie in person after the ANC  
23 meeting.

24 BZA CHAIR HILL: Hey, Mr. Dungan.

25 MR. DUNGAN: Yes?

1 BZA CHAIR HILL: Just a reminder, if you can just  
2 go ahead and call her Ms. Marshall.

3 MR. DUNGAN: Sorry. Ms. Marshall.

4 BZA CHAIR HILL: Thanks.

5 MR. DUNGAN: So, I saw Ms. Marshall in person as  
6 well. Said hello. And I've been in communication with her  
7 over the years in general. And that was when I was up there  
8 sweeping up the back after the ANC meeting.

9 So, just wanted to mention. I know that  
10 Commissioner Hood pointed out that it wouldn't be good not  
11 to communicate. So, we have reached.

12 And Commissioner Botstein has been -- or Botstein,  
13 excuse me, has been the main liaison, as Matthew Lee  
14 identified, as Mr. Lee identified.

15 And then, also, with regards to the sign, I just  
16 checked in with the tenants about that yesterday. They said  
17 that the BZA sign has been up for over 6 months. And the  
18 sign that they put over it was for 2 days for Halloween so  
19 that they could get trick-or-treaters, and they wouldn't  
20 think it was a construction site.

21 So, just wanted to clarify all that. Thank you.

22 BZA CHAIR HILL: Okay, Mr. Dungan.

23 And I don't know, but, again, if there is trash,  
24 or a sofa, or any of that stuff out there now, you know,  
25 please be sure you go ahead and take care of that. Okay?

1 MR. DUNGAN: Yes, sir. There is not. I was there  
2 yesterday.

3 BZA CHAIR HILL: Okay. Thank you.

4 Mr. Blake, you had a question?

5 MEMBER BLAKE: Yeah. Mr. Dungan, could you, could  
6 you tell me, based on the experiences you've had in your  
7 interaction with the neighbors and the ANC, do you believe  
8 there is a compromise that's possible in this situation at  
9 this point?

10 MR. DUNGAN: I am always optimistic that people can  
11 work things out. I'm a middle child, so hold on for it.

12 We have been told no.

13 So, what do I think changed your question, sir,  
14 is that there can be, but that might be misguided given I've  
15 already been told no, that there's not.

16 MS. DOMINGUEZ: If I could, this is Alicia  
17 Dominguez. I just, I want to add that we did request a  
18 compromise during the ANC meeting --

19 BZA CHAIR HILL: Hold on a second. Hold on a  
20 second, Ms. Dominguez. You surprise me all the time.

21 So, Ms. Dominguez, can you identify yourself for  
22 the record, please?

23 MS. DOMINGUEZ: Yes. Alicia Dominguez, owner at  
24 4101 New Hampshire.

25 BZA CHAIR HILL: Okay. So, Ms. Dominguez, just to

1 let you know, and I don't mind, we're going to -- it's  
2 irregular because this is a weird thing, right. Like, if we  
3 were in a normal life/die situation, people that have been  
4 giving testimony, they are not considered parties and so they  
5 don't -- we don't have kind of a back and forth dialog.

6 MS. DOMINGUEZ: Okay.

7 BZA CHAIR HILL: However. However, since you  
8 started to tell us something, what is it that you'd like to  
9 tell us?

10 MS. DOMINGUEZ: Well, I'll leave my comments only  
11 to the last point, although I think some of the earlier  
12 statements were also -- I have a different understanding of  
13 the facts.

14 But, most importantly, in terms of a compromise,  
15 during the ANC meeting that I believe was in April or May of  
16 this year we had asked the applicant about potential two  
17 stories. And he told us that, no, it wasn't finance -- it  
18 didn't financially make sense for him to build only to two  
19 stories.

20 And so it's at that point, that's the reason why  
21 we think it's -- and, again, he's never reached out to me,  
22 or my husband. So, I dispute the characterization that he's  
23 actually made real effort to compromise with us. But even  
24 efforts that we made at the ANC meeting about two stories,  
25 he quickly rejected and told us that was not an option

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1 because of stories --

2 BZA CHAIR HILL: Okay. All right. Ms. Dominguez,  
3 thank you for your testimony.

4 Does anybody have any questions for Ms. Dominguez  
5 before I let her go?

6 Okay. Mr. Young, if you could please clear the  
7 hearing room. Thank you.

8 So, what's now starting to happen is it's now back  
9 and forth. Right? And you, Mr. Dungan, you're the  
10 applicant. You have an opportunity to rebut any testimony  
11 that's been given. Right?

12 So, do you have anything that you'd like to add  
13 about -- I mean, it seems clear to me you have offered a  
14 something that you didn't think you were going to be able to  
15 do. Right? So, but do you have anything you'd like to add  
16 or rebut, consider now we've had additional testimony?

17 MR. DUNGAN: I agree with Mrs. Dominguez, I have  
18 not spoken to her directly. I also agreed that the project  
19 is not possible if it is two stories. Those are both, those  
20 are both the truth.

21 So, the best that we've been able to do is reduce  
22 every ceiling to only 8 feet to get it down to the 32 feet,  
23 which is the lowest that we could go to make it a blend  
24 essentially, as rather it being 39 feet with a parapet we're  
25 down to 32 feet and 3 inches. But that's the best that we

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1 can do and still provide a 60 percent affordable, 60 percent  
2 MFI affordable housing unit because of the inclusionary zone.

3 BZA CHAIR HILL: Okay. All right. Does anybody  
4 have anything else from anybody? And if so, raise your hand.

5 All right, Mr. Cross, you got anything at the end?

6 MR. CROSS: No, sir. We appreciate the Board's  
7 time and consider on this.

8 BZA CHAIR HILL: Okay, thanks. All right, Mr.  
9 Young, if you could please excuse everybody, I'm going to  
10 close the hearing and the record, except what we decided to  
11 allow in.

12 Can we take a quick 5-minute break? Just a quick  
13 5-minute break. Okay? Okay, I'll be right back.

14 (Whereupon, the above-entitled matter went off the  
15 record at 12:53 p.m. and resumed at 12:58 p.m.)

16 BZA CHAIR HILL: Okay, so I can start. Yes, I  
17 mean it's disappointing obviously, that the ANC, that people  
18 aren't onboard with this project. I mean you know, it is a  
19 larger scale building that currently has a two-car garage,  
20 right?

21 And, so there's nothing that is going to, anyone,  
22 no one would want anything there that is going to now  
23 obstruct their view from what they currently see, which is  
24 over the garage.

25 And, I don't have any you know, I completely

1 understand that. Unfortunately for us, you know, as we've  
2 been told many, many times, a view is not something you're  
3 allowed to have by the regulations.

4           It's whether or not you know, light and air is  
5 affected, whether it's unreasonable, whether it's  
6 unreasonable, whether, you know, it's undue impacts.

7           And, in terms of this particular property, I mean  
8 I would agree that it is helpful to see what the matter-of-  
9 right massing is, even if it is for a building, and not a  
10 dwelling.

11           Like, even if it was a dwelling unit, they just  
12 have to figure out how to sell one of them, and then that  
13 person lives in that dwelling unit, and then the other one  
14 becomes the accessory dwelling.

15           I don't know, I'm just saying there is a way  
16 around that, right? Whether or not it's financially  
17 feasible, I don't know, right?

18           I am encouraged by the IZ unit. I mean that's  
19 what the Zoning Commission did. Like, the Zoning Commission,  
20 not to point fingers at you Chairman Hood, but the Zoning  
21 Commission is the one that came up with the 60 percent,  
22 right?

23           Like, I mean that's how you qualify for this  
24 smaller land, smaller plot, is to provide a 60 percent unit.

25           If you wanted to provide a more you know, more

1 deducted unit, you would have done that and put it into the,  
2 not you personally, put it into the, the regulations. I mean  
3 they're living by the regulations that gives them this  
4 opportunity to apply for this.

5           The Office of Zoning has put forward their  
6 analysis for why they believe this to be in the criteria.  
7 I would agree with the Office of Planning in terms of the  
8 criteria.

9           The part that I guess I'm a little bit more  
10 comfortable with, is that they did lower the building, right?  
11 They did lower the building more in line with what I think  
12 is kind of the character of that road, which I think was what  
13 most people had issues with the last time this was in front  
14 of us. They did change the way it looks in that I think it  
15 actually looks more in character even, with Taylor Street.

16           I think that they putting that balcony on the  
17 back, opens up more light and air to the design than it was  
18 before. I mean I think it's a better design. I mean I think  
19 that because we've gone through this, it's a better design.  
20 I think it's a shorter design.

21           I think that from the matter-of-right options that  
22 they could have possibly done with the massing as an  
23 accessory building, that still would have been a problem for  
24 anyone who lives in that row that are affected from the  
25 backyard.

1 I mean I think it's unfortunate that it's change.  
2 And I wouldn't want it there either because it was now  
3 blocking the view that I had. But unfortunately, the  
4 regulations that are in front of us, for me, I think I have  
5 to go ahead and vote in favor of the project.

6 However, I would, I'm a little confused as to you  
7 know, there seems to be some misconception. I don't know,  
8 like I'm not sure whether you know, the developer and his,  
9 and the community outreach.

10 I mean I definitely hope that the developer you  
11 know, is cleaning up the area, providing the area, and if  
12 not, than DCRA, you know, the, there is something that can  
13 be done with that. There's complaints that can be made so  
14 that there are fines that can be levied. But that's not  
15 within the purview of the BZA.

16 So, I'm going to be voting in favor, and I'm going  
17 to turn to, well, I'll turn to Chairman Hood.

18 Chairman Hood, you want to go?

19 ZC CHAIR HOOD: I sure will, but I'm more  
20 interested in hearing from Board Member Blake. But I'll go  
21 ahead with my comments first.

22 BZA CHAIR HILL: Do you want to wait, Chairman  
23 Hood? I'll go around the horn, you can go last.

24 ZC CHAIR HOOD: Oh no, I can go now but I do want  
25 to hear where Mr. Blake feels --

1 BZA CHAIR HILL: All right, okay.

2 ZC CHAIR HOOD: -- because you know, I was  
3 interested in.

4 BZA CHAIR HILL: Okay.

5 ZC CHAIR HOOD: Let me just say I think Mr.  
6 Chairman, you mentioned about the view. It's not just in our  
7 regulations, the Supreme Court has said to this city, and I  
8 think across this country, you don't buy a view. You don't  
9 buy a view.

10 And, it's very unfortunate that we are at this  
11 point. But so that says it's not just our regulations, it's  
12 what the courts have told planning commissions, zoning  
13 commissions, BZAs, or whoever the case may be across the  
14 country.

15 The other thing is the issue about the voluntary  
16 inclusionary zoning unit, that came, that stemmed from public  
17 policy. And, what we had to do, we had to institute that in  
18 the zoning regulations to try to increase that.

19 And, that's what's happened here. That's what I  
20 meant about a racial equity lens is I don't know, I need to  
21 find out where we are on the BZA with pushing the racial  
22 equity lens. Because I think we're required by law to start  
23 talking about that matter.

24 I think the Zoning Commission, I mean not the  
25 Zoning Commission, the city council and the mayor approved

1 that legislation last year. And, I'm sure counsel will  
2 correctly me at some later point if I'm incorrect. But I  
3 believe that is the way it was supposed to be seen.

4 My whole issue though about the communication, is  
5 can something be worked out? Can something be done? It's  
6 always good but I'm hearing two sides to some of the same  
7 people, and you did mention the, the applicant did mention  
8 that he didn't speak to Ms. Dominguez, but I'm trying to  
9 figure out who talked to who.

10 Because sometimes having conversations resolve  
11 issues. And, I think that's, I thought that's where Board  
12 Member Blake was going.

13 And, then one of the questions that I asked myself  
14 is something can go there. How can we lessen impact?  
15 Because something can go there. And, I kept hearing you  
16 referring to the matter-of-right, and I saw what they did to  
17 try to reduce the lessen impact.

18 And, also the special exception clause gives us  
19 a wide variety of what we look at.

20 I want to hear from others but you know, to me,  
21 I don't think due diligence was done in communicating. If  
22 you communicated like I stated earlier, if you communicated  
23 and you're still separate and apart, that's fine. If you  
24 didn't communicate and you're apart, then I have a problem.

25 And, that conversation between the applicant and,

1 I mean the rebuttal I mean and the comments we got back did  
2 not clarify that for me, not one bit. All that did was  
3 exacerbate and confuse me even more.

4 So, that's why I, you know, a special exception  
5 again gives us a wide authority. I do believe, and the  
6 applicant has admitted, that it's going to be impacts. But  
7 it's how we can soften and lessen the impacts.

8 But do we know what some of the other impacts are  
9 if we just say no? And, I'm not saying the community just  
10 said no, that's what was represented.

11 So, that's why I'm, it's a lot going on here. I  
12 would like to see them have a conversation, but let me hear  
13 from others.

14 Thank you, Mr. Chairman.

15 BZA CHAIR HILL: Thank you, Chairman Hood. Mr.  
16 Smith?

17 MEMBER SMITH: Okay, I share the same, some of the  
18 same concerns -- can you hear me?

19 (No audible response.)

20 MEMBER SMITH: Okay. I share some of the same  
21 concerns that Chairman Hood spoke about. Just to, you know,  
22 go back before I go into my comments.

23 This is an improved design from what we saw  
24 previously. There was some concerns, and the ones that I  
25 believe that I raised related to the character, privacy, and

1 the shadowing.

2           So, putting on a mansard roof and lowering the,  
3 you know, in some way shape, or form, lowering the height,  
4 did, it does bring the building up more into character with  
5 buildings along the Taylor Street frontage.

6           What I am still concerned about is the shadowing  
7 on the adjacent properties to the, along New Hampshire.

8           So, right now given the size and the scale, I  
9 don't know where I'm at as far as approving it. Because I'm  
10 of two minds of this.

11           I fully understand and appreciate the Zoning  
12 Commission's attempt to create additional affordable housing  
13 in the city, by including this particular type of provision  
14 into the zoning regulations.

15           But I do believe that this type of provision does  
16 need to, needs to show that you are having the least amount  
17 of impact possible, I believe, on adjacent properties.

18           And, based on the special exception criteria, I'm  
19 not completely sold and I would love to hear from, you know,  
20 my other two board members that haven't spoke, I'm not  
21 completely sold that the applicant with this building as  
22 designed, has you know, sufficiently mitigated the adverse  
23 impacts on the adjacent property owners.

24           So, you know, I'm still you know, vacillating over  
25 this. But right now I'm not fully there yet.



1           So, love to hear back, hear from my other  
2 commissioners.

3           BZA CHAIR HILL: Okay. Vice Chair John?

4           VICE CHAIRPERSON JOHN: So, thank you, Mr.  
5 Chairman.

6           So, I'm going to take a little different approach  
7 because I believe that the updated design makes a big  
8 difference. And, that by trying to blend the new structure  
9 in with the houses on Taylor Street, and reducing the height,  
10 and removing the parapet will have an impact on the shadow.

11           Now in terms of the shadowing, which is always  
12 difficult for me in the city because there's always  
13 shadowing, and there is no, there is no structure there now.  
14 So, there will be an impact.

15           And, so the question for the Board is whether it  
16 is undue impact. And, because the Board cannot protect the  
17 view for anybody, there will be a loss of views, and there  
18 will be some shadowing.

19           Now, the applicant noted the distance between the  
20 property and the two neighboring homeowners, which I  
21 completely understand their concerns.

22           And, so to the west where Ms. I believe it was  
23 Rodriguez? No, I'm sorry, Ms. Shannon lives more to the  
24 east, and there is an alley and a distance of about, let me  
25 get it, I think 28 feet, which is significant considering

1 that the typical yard, required yard, is 20 feet. This, or  
2 the side yard is eight feet.

3 Here, there is an alley that separates those two  
4 houses. And, to the west for 4101 New Hampshire Avenue, I  
5 believe that distance is 37 feet.

6 And, behind the structure there is also  
7 significant distance as well. And, let me just read from  
8 what the applicant said.

9 That the structure is fully detached except for  
10 the garage, and maintains a generous minimum distance from  
11 neighboring structures of 37 feet to the west, 30 feet to the  
12 north, that's more closer to 4107 I believe, New Hampshire,  
13 and 28 feet to the east.

14 So, I think all of those things create a better  
15 flow for light and air, and would reduce my concerns about,  
16 about light and air.

17 Now, the issue also is of the windows. And, if  
18 we were to approve this, I would want a condition that maybe,  
19 and I would suggest this to the Board to see what everyone  
20 thinks, a condition that would require some sort of you know,  
21 shading to protect the neighbor who says their, that the  
22 windows look directly into her kitchen.

23 But, to be fair, that happens throughout the city  
24 and I can look out and see windows you know, people's windows  
25 right through my rear window. And, if the light is on at

1 night, I can see them walking around. So, you know, that's  
2 part of city life.

3 So, the other thing I wanted to say before I wrap  
4 up is that the applicant is only requesting 300 square feet  
5 in relief, and in return the city would have a three bedroom  
6 IZ unit and 60 percent of AMI.

7 And, the project meets all other development  
8 standards.

9 The other thing I want to discuss is that there's  
10 been a lot of talk about, and I think the ANC may have missed  
11 that, not missed that. In the discussions it was not clear  
12 that what the applicant was saying is that any, any person  
13 could build a structure that does not have a dwelling unit  
14 it in, that would meet the development standards.

15 The issue is that there can't be a dwelling unit  
16 on the same lot with the other 4107, which has two units  
17 already. And, so there was some misconception about that.

18 And, I think at some point, we have to recognize  
19 that the regulations allow these development standards. And,  
20 there is tension with neighbors when they're not used to  
21 seeing that height in the neighborhood.

22 But because the regulations allow it, what we do  
23 as a Board is to see if we can reduce the impact. Which I  
24 think the applicant has tried to do in this case.

25 So, I'm in support of the application. I didn't

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1 think I would get here but after the applicant went back and  
2 actually tried to change the design to make it more  
3 consistent with Taylor Street, I, you know, felt more  
4 comfortable with the application.

5 I would also note that OP's analysis was helpful  
6 and so, that's what I have Mr. Chairman. I'm sorry I spoke  
7 so long.

8 BZA CHAIR HILL: No, I'm just, I don't know you  
9 know, what I just to kind of provide some feedback. And, I'd  
10 be even kind of curious with the Office of Planning. I mean  
11 it's a pretty wide alley that is there with the property  
12 that's next door.

13 Meaning we've done things where like the windows  
14 are, I mean the windows are right on top of other windows  
15 where there has been like some shading put in.

16 And I don't know if this would be a situation  
17 where we would want to do that. I mean I also don't know how  
18 long we kind of go back and forth with this design.

19 But I'll come back around that. You all can talk,  
20 think about that because I don't know where we are currently  
21 yet.

22 Mr. Blake?

23 MEMBER BLAKE: Sure, thanks.

24 I do think that the change in design is improved.  
25 And, I think it is now more in character with the Taylor

1 Street property. But I tell you while I continue to believe  
2 that this is too much for this lot. But I'll concede it does  
3 meet the development standards for an RF-1 zone. And, since  
4 it meets the standards, that's the thing we have to focus on.

5 From a shadowing perspective, it's clear whatever  
6 they do is going to be an issue because you're building a  
7 much bigger structure.

8 There's a garage there, as you pointed out, Mr.  
9 Chair, and at the end of the day, it's going to be different  
10 whether it's 22 feet, 26 feet, 30 feet. Whatever it's going  
11 to be, it's going to be a very different situation.

12 So, but I will agree with Vice Chair John's  
13 comments regarding light, air and privacy. I do actually  
14 think that the alley does provide a sufficient bumper for 517  
15 Taylor. And, there are no windows on the east side of the  
16 building.

17 So, to some extent, this has met the requirements  
18 that we would talk about. And, while I'm, I'm not convinced  
19 that a smaller unit would be uneconomic, based on what I  
20 heard, it's pretty clear to me that there's no room for a  
21 compromise.

22 So, based on that, and the fact that I do believe  
23 it meets the standards, I actually would be at this point  
24 reluctantly willing to support it.

25 BZA CHAIR HILL: Okay. So, Ms. John, do you want,

1 well again, Mr. Blake said well in terms of the alley, and  
2 then that there's no windows on the other side. I think I'm  
3 comfortable enough with the way the building is proposed.

4 I don't know again. The only other thing that I  
5 can think of is if they somehow tried to provide some kind  
6 of economic analysis as to how you know, it didn't work with,  
7 with a smaller building, right?

8 And, so I don't think I'm there where I need to  
9 see that. And, I guess I'm just going to vote with you guys  
10 in favor because I think that they.

11 I mean I kind of was, I was leaning towards in  
12 favor the way it was before. You know, I've got to say this  
13 is because, and I'm, I don't mean to tell anything  
14 differently to the people that are watching in terms of this  
15 is different than it was going to be, right?

16 Or it actually was going to fail before. It  
17 probably was going to fail before. And, so I don't know  
18 where you guys are now. I guess I can make a motion and see.

19 I'll just make a motion.

20 All right, I'm going to go ahead --

21 Ms. John?

22 VICE CHAIRPERSON JOHN: Before you make a motion,  
23 I heard Mr. Blake say that the windows were on the east side  
24 facing away from New Hampshire, or not. If I --

25 MEMBER BLAKE: The windows are on the east side

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1 facing 517 and the alley, 517 and the alley.

2 VICE CHAIRPERSON JOHN: Okay.

3 MEMBER BLAKE: The west side is New Hampshire.

4 VICE CHAIRPERSON JOHN: Okay. So, okay, so I'll  
5 withdraw my comments about covering the windows because of  
6 the size of the alley and the distance from the other house.

7 Thank you.

8 MEMBER SMITH: Can I also --

9 VICE CHAIRPERSON JOHN: Go ahead.

10 MEMBER SMITH: Can I also explain on another  
11 observation building off of what you're, when you were  
12 discussing it, Vice Chair John?

13 Another revision of the design also removes the  
14 three-story balconies that were under the previous iterations  
15 of this.

16 So, I think a previous, one of the speakers spoke  
17 to a reduction of their privacy along Taylor, along Taylor  
18 Street. The applicants removed those balconies and there's  
19 only one third floor patio landing of a sort, that currently  
20 exists in the current design.

21 So, it seems that they have attempted to address  
22 some of those privacy questions that arose the last time we  
23 heard this case, and that we discussed with him the last time  
24 that you know, we continued this case.

25 So, kudos to him for working on that design.

1 I understand that aren't, this isn't a perfect  
2 design. As you know, Mr. Blake spoke of, and you also spoke  
3 of Ms. John, there will be some level of shadowing here  
4 regardless of what is built.

5 But I do believe that the applicant has attempted  
6 to take account of some of our concerns that we raised at the  
7 last hearing and, and to some I know the neighborhood doesn't  
8 really feel this way, but some of the scale and massing  
9 questions that were raised about the, the original height of  
10 the building, attempt to address that.

11 So, I agree with Mr. Blake that I do believe that  
12 this is probably, the size of this building is probably a  
13 little large to me, for the size of the property. But given  
14 the revisions, given that this particular development would  
15 incorporate an IZ unit, increasing the amount of affordable  
16 housing within the District, I am also inclined to support.

17 So, just wanted to put it out there.

18 BZA CHAIR HILL: Okay, and maybe I'll let you all  
19 go around before I make a motion or whatever one more time  
20 if you want. But what you bring up Mr. Smith, is again,  
21 that's the whole point that we're here, right?

22 I mean the reason why this is a possibility is  
23 because of the IZ unit. Like, that's the, otherwise the  
24 lot's too small.

25 MEMBER SMITH: Right.



1           BZA CHAIR HILL: And, so that's something that you  
2 know, would get adjusted at a different level, which would  
3 get adjusted at the zoning commission level if that would be  
4 something that would be you know, at that level. I don't  
5 know. You know, I mean this is.

6           And that's why we do have people, albeit we have  
7 the chairman today with us, but that is why we do have people  
8 from the Zoning Commission, so that they see what happens,  
9 right?

10           And, that's not to say its necessarily a bad  
11 thing. I'm just saying you know, see what happens.

12           Chairman Hood, you want to say anything at the  
13 end?

14           ZC CHAIR HOOD: Yes, I have worked with a number  
15 of BZAs. Now you all probably are not going to like this,  
16 but I've worked with a number of BZA members over 24 years,  
17 and they never always went back to the zoning regulations.  
18 What they did was made it work.

19           And, I will tell you, I think you all were making  
20 it work but the only fundamental problem I'm having now is  
21 that I keep hearing, we can't do anything because the Zoning  
22 Commission or the standards tell us we have to do that.

23           It's not actually true. What I keep saying I know  
24 when I'm here, is that the special exception, you have a wide  
25 cadre award of discretion.

1 And, because they apply for it, you can't just  
2 mount on this, the development standards. You have to look  
3 at the adverse impacts. And, you can minimize or detract  
4 from that.

5 So, I agree. I think the public policy and what  
6 the Zoning Commission put in place is how you use the tool.  
7 And, that's not a lecture to the zoning, I mean to the BZA,  
8 but it is a lecture.

9 So, anyway, that's where I am. I think we'd have  
10 done more but I hear what the Board is going to do. I  
11 haven't made up my mind probably until you call for the vote.  
12 Because I really don't think we've done our due diligence.  
13 But I do know there are going to be impacts. I already know  
14 that. That's what I was trying to get.

15 I thought Board Member Blake was going to. That  
16 the Board would know, we would know whether these  
17 conversations have been had. Not necessarily what with the  
18 ANC commission because everybody don't go to ANC meetings.

19 So, anyway, and I'm not going to sua sponte this.  
20 I just, it is what it is. So, we have to work with the  
21 materials that are before us.

22 So those are my comments.

23 BZA CHAIR HILL: So Chairman, I mean none of us,  
24 none of us necessarily like this, right? We are voting for  
25 it because we believe it fits within the regulations. That's

1 what I'm saying right?

2 And, I'm saying do you want me to do anything  
3 different before I make a motion? Do you want to see  
4 something different?

5 ZC CHAIR HOOD: No, I don't want to see anything  
6 different but I'm the only person that wants to go back and  
7 know whether or not. I would feel more comfortable knowing  
8 that a conversation had been had.

9 I'm not saying it's going to change anything. I  
10 agree with Board Member Blake. I agree with for the most,  
11 some things I agree with Board Member John, and I'm not going  
12 to call everybody out.

13 But the point is, I thought he was going down the  
14 line so I'd like to have assurances that I know we have  
15 dotted all of our I's and crossed all of our T's.

16 But guess what? Nobody else agrees with that, you  
17 all are fine, the Zoning Commission has done their due  
18 diligence.

19 Mr. Blake, I'm sorry, maybe I called your name out  
20 and I see you raising your hand.

21 BZA CHAIR HILL: No, no, Chairman now we're just  
22 going to keep going to this before lunch hours. We took  
23 testimony. They said they tried to reach out to the ANC.  
24 The ANC did not want to hear from them, right? They were  
25 like this, if this didn't change you know, then it didn't

1 seem to matter, right?

2           And, we can go back and get more testimony from  
3 them. They're still here. Like we can call them back in and  
4 just go ahead and find out what's going on.

5           ZC CHAIR HOOD: Mr. Chairman, I've been in this  
6 city, I'm just saying I've been in this city and been doing  
7 this stuff like you have for a long time. What we heard  
8 today was so contradictory from both sides.

9           One person said they did this, the other person  
10 said they didn't do that. One person they didn't do that,  
11 the other person said they did do that.

12           All I wanted to know is if the conversation has  
13 been had with the most immediate affected neighbors. Because  
14 everybody don't go to the ANC meetings.

15           BZA CHAIR HILL: Okay.

16           ZC CHAIR HOOD: Everybody don't do that. That's  
17 all I wanted to know.

18           BZA CHAIR HILL: I'm going to go back around the  
19 table because I don't, now we're having a little bit of a  
20 conversation.

21           First of all, you've been doing this for 24 years,  
22 right? So, you've had a lot of BZA people, correct?

23           ZC CHAIR HOOD: (No audible response.)

24           BZA CHAIR HILL: Correct?

25           ZC CHAIR HOOD: (No audible response.)

1 BZA CHAIR HILL: And, I want to know we are the  
2 best looking ones you've had, correct?

3 ZC CHAIR HOOD: All of my BZA colleagues look very  
4 good and did a excellent job.

5 BZA CHAIR HILL: Okay, all right. I don't know  
6 whether that's an answer or not.

7 So, Mr. Blake, you had a comment before we, we can  
8 reopen this and bring everybody back in. They're still  
9 there. No, no, they're still there.

10 Mr. Blake?

11 MEMBER BLAKE: Yes, I hear you, Commissioner, very  
12 much. And, I agree that it would be great if I thought there  
13 was an opportunity for compromise and that they had not had  
14 a dialogue. Because the ideal situation here would be that  
15 this thing was of a height that fit in with the, and the  
16 community was comfortable with it.

17 But you got a whole lot of rejection here such  
18 that I don't know that it's even possible to get enough  
19 people onboard to get this. And, certainly the ANC should  
20 have reviewed. I would love to have had the ANC review it  
21 and give it a thumbs up.

22 I have heard nothing from the ANC. They're not  
23 even present today, which is really surprising because they  
24 have party status.

25 So, it would be ideal to get a, to see if there

1 was a compromise possible. But to me, I'm not based on what  
2 I'm seeing at this moment in time, there is not an  
3 opportunity for compromise.

4 BZA CHAIR HILL: Okay. Let's bring everybody back  
5 in. I don't want to be the, okay, Vice Chair John.

6 I don't want to be the person that leaves any  
7 questions on the table because it's only going to take a  
8 quick five minutes to find out, to clarify what kind of  
9 conversations have been going on. That's all it's going to  
10 take is five minutes.

11 But Ms. John --

12 ZC CHAIR HOOD: Commissioner John.

13 VICE CHAIRPERSON JOHN: This is what I think now.

14 That there was no conversation with the two  
15 tenants on the side about a compromise. I think that the  
16 owner should have made sure that he went to those owners with  
17 his plans and discussed the proposal.

18 But I also believe that the tenants would not have  
19 compromised because they want a two-story building. And, I  
20 don't know if this board can tell this developer that she can  
21 only build a two-story building.

22 So, that's kind of where I am on it. And, I hear  
23 my Commissioner Hood's concerns, and I don't want to be sua  
24 sponte'd. But I just, you know, and I understand your  
25 concerns because we struggle with this on the days you're not

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1 here, and on the days you're here.

2           We have developments that meet the standards. But  
3 they don't meet this, they don't always comply you know, to  
4 a T with X 901. And, so we struggle with that. We struggled  
5 with that the most on this Board.

6           So, that's what I wanted to say. Mr. Chairman,  
7 if you'd like to call everybody back, that's fine.

8           BZA CHAIR HILL: Yes, I want to call everybody  
9 back. Let's call, oh --

10           (Simultaneous speaking.)

11           ZC CHAIR HOOD: If this Board as the Vice Chair  
12 has mentioned, I'm not here every week. But if this Board  
13 feels like because I see that I'm the only one. I've heard  
14 everybody.

15           One thing I can do is count. And again, I'm not  
16 necessarily against voting for it, I just wanted to make sure  
17 everything was exhausted. I don't want to leave anything on  
18 the table. And, really I only need one person.

19           I agree with Vice Chair John on this. The  
20 applicant could have reached out to those neighbors. I heard  
21 him say specifically, this is where my concern is. I heard  
22 him say specifically that he reached to the ANC. That's what  
23 my concern is.

24           Sometime the ANCs may live blocks away. And, most  
25 affected people may not, may be able to work something out.

1 And, I hear you all saying that it won't. And, probably not.  
2 And, something's going to be there. But I just feel I would  
3 feel better knowing that we at least took that off the table.

4 BZA CHAIR HILL: Okay, let's bring them back in.  
5 Let's bring them back in.

6 Mr. Young, can you try to bring back in the  
7 applicant, and the property owner, and the architect? I  
8 think it was the architect. I know Mr. Cross, well, Mr.  
9 Cross is the architect. I always forget.

10 ZC CHAIR HOOD: I would be inclined, Mr. Chairman,  
11 just to ask Ms. Dominguez one question, and then that would  
12 satisfy.

13 BZA CHAIR HILL: Okay, is Ms. Dominguez still  
14 there also, Mr. Young?

15 (No audible response.)

16 BZA CHAIR HILL: Okay, there we go.

17 ZC CHAIR HOOD: I just need to ask Ms. Dominguez.  
18 We don't need another hearing.

19 BZA CHAIR HILL: Okay.

20 ZC CHAIR HOOD: Ms. Dominguez and --

21 (Simultaneous speaking.)

22 BZA CHAIR HILL: Give me a second, give me a  
23 second.

24 Mr. Cross, are you there?

25 (Pause.)



1 MR. CROSS: I am.

2 BZA CHAIR HILL: Okay, all right. Ms. Dominguez,  
3 can you introduce yourself for the record?

4 MS. DOMINGUEZ: Yes, Alicia Dominguez, the owner  
5 at 4101 New Hampshire Avenue.

6 BZA CHAIR HILL: Okay, Mr. Cross, just so you  
7 know, you will have the opportunity to rebut anything, and  
8 then you'll have the last word, right?

9 MR. CROSS: (No audible response.)

10 BZA CHAIR HILL: Chairman Hood, you had a question  
11 for Ms. Dominguez?

12 ZC CHAIR HOOD: Ms. Dominguez, the only question  
13 that I really want to ask you and I heard you, and I think  
14 maybe Board Member Blake may have asked. The only one  
15 question I want to ask you: is there any room for compromise?

16 And without exhausting, taking the floor off and  
17 all that, is there any other room for compromise?

18 MS. DOMINGUEZ: Yes, I think there is. I think  
19 that we haven't talked about even potential compromises since  
20 the ANC meeting that was in, I think it was either April or  
21 May.

22 And, I think, you know, and at that point the only  
23 thing that we had asked about then was whether it's possible  
24 to do two stories, and they said no. But there's been no  
25 opportunity for any further dialogue.

1           So, if you look at what they're describing as like  
2 precedent properties, like the one on Upshur Street where  
3 it's a larger, like, I guess my point is, you know, one  
4 potential compromise that we could think about is I still  
5 really dislike that the big block of column to the left of  
6 this section of the structure that is like, I don't know the  
7 architecture term --

8           ZC CHAIR HOOD:   Is --

9           MS. DOMINGUEZ:   -- but the one that makes it  
10 actually look like this --

11          ZC CHAIR HOOD:   -- an acknowledgment?

12          MS. DOMINGUEZ:   Yes. So, but to the left there's  
13 still just like a big block of three story square, very cold  
14 ugly completely out of the character of the rest of the  
15 neighborhood.

16           I think it's possible what if they were to make  
17 it the entire building, even if it's still three stories, if  
18 they were to make the entire building match the way that the  
19 rest of the houses do? Which is similar to the, what they're  
20 explaining in the precedent property on Upshur.

21           It's wider but at least it is the whole facade  
22 would be in character with the neighborhood.

23          ZC CHAIR HOOD:   So, Ms. Dominguez, let me stop you  
24 right there, Ms. Dominguez.

25           So, I hear what you're saying. It has nothing to

1 do with taking a floor off, it's more of a design issue, and  
2 those are the kind of conversations that I'm talking about  
3 that should have been had before we even got to this point.

4 I don't know if they're willing to do that. I  
5 don't know if the Board members even agree with that. But  
6 I think for me, residents of this city I've known once they  
7 have had input and things they can tolerate some of the  
8 inconvenience that happens.

9 So, that's all I was trying to take off the table.  
10 Ms. Dominguez, that's all I need. You validated my point.  
11 I don't know where everybody else is, but I appreciate that.

12 Thank you.

13 MS. DOMINGUEZ: Thank you.

14 ZC CHAIR HOOD: Thank you, Mr. Chairman. That's  
15 all I --

16 BZA CHAIR HILL: All right, does anybody got any  
17 more questions for Ms. Dominguez?

18 (No audible response.)

19 BZA CHAIR HILL: Okay. All right, Ms. Dominguez,  
20 thanks so much.

21 Take care, bye-bye.

22 All right, Mr. Young, if you could please excuse  
23 Ms. Dominguez.

24 (No audible response.)

25 BZA CHAIR HILL: Okay. Mr. Cross, there has been

1 a lot of discussion about conversations that you all may or  
2 may not have had with the ANC, and also just kind of  
3 communications. This has actually gone on a lot longer than  
4 a lot of our cases in this particular area. If you could  
5 kind of clarify your outreach, or what you understand to be  
6 the outreach.

7           And, I will make one comment about the design, and  
8 I'm not, I'm only one person also, is that you know, you  
9 know, the designs that we kind of, it is good that the  
10 neighbors talk to each other and see what happens. But like  
11 one person is not what the BZA ends up having to kind of try  
12 to adhere to, right? We're here to look at the standards.

13           And, I don't know what the applicant may or may  
14 not have done. You know, there are no windows on the side of  
15 that building. Like there is no privacy issue on the side  
16 of that building. That building has you know, you don't see  
17 anything.

18           If there were windows, then you would have some  
19 privacy issues. So, that's what I have to say about that  
20 side of that building.

21           So, Mr. Cross, if you could please explain your  
22 outreach efforts in detail since the last time you were here?

23           MR. CROSS: Yes. I guess it's just give it a  
24 quick time line based on our notes here, and I'm working  
25 quickly to try to answer this as accurately as possible.

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1           It looks like our initial outreach to the SMD was  
2 on 4/29 of this year. That's when we started working with the  
3 SMD and initially had our meeting with, at the SMD level  
4 again with Ms. Botstein.

5           I have record of us having a direct call with the  
6 SMD commissioner on 5/5, and we had our ANC meeting with them  
7 on 5/12.

8           I know that there has been additional back and  
9 forth between our client, the applicant, and her in addition  
10 to those meetings, as well as with us.

11           Most notably was the exchange around the beginning  
12 of September, when we had the redesign following the first  
13 PZA hearing.

14           That was the conversation that was alluded to  
15 earlier, which suggested that the SMD commissioner had told  
16 us that there was no, no need to meet again, positions had  
17 not changed, and that it may be up to the BZA at this point.

18           I may turn it over to Mr. Dungan, if he has any  
19 insight on direct communications that we were not part of.

20           BZA CHAIR HILL: Mr. Dungan, do you have any  
21 comments?

22           And, Mr. Young, I want you to pull up the slide  
23 deck for me when you get a chance, but not just yet.

24           MR. DUNGAN: Yes, thank you for bringing us back.  
25 I appreciate your time.

1           We did do all the communication through the Single  
2 Member District meeting, and everyone that spoke today was  
3 present there. They were present for the main ANC meeting,  
4 and I do understand Commissioner Hood's concern that  
5 sometimes the ANC does not communicate, or there are issues  
6 where the direct neighbors have not been engaged.

7           In this case, everything has been done through the  
8 ANC with Commissioner Botstein being very, very active in  
9 giving all of her time throughout the process.

10           So, there's been communication throughout. As I  
11 mentioned, it averaged out correctly to Ms. Marshall at 4103,  
12 which is two properties down from the proposed development.

13           I did not reach out directly to Ms. Dominguez  
14 because her position was made clear in the Single Member  
15 District meeting, ANC meeting, and the four BZA hearings that  
16 have taken place as well.

17           But our last communication I can second what Mr.  
18 Cross said was with Commissioner Botstein stating that there  
19 was no room for compromise, and everybody was still a no.

20           And, regardless, we continued to work on the  
21 building and reduced the impact as much as we could with the  
22 changes that we made in the height and otherwise, with the  
23 privacy with the balconies that I believe was touched on.

24           So, we have operated in good faith through the ANC  
25 throughout this process.

1 That's all I have, so thank you very much.

2 BZA CHAIR HILL: All right, I'm going to ask for  
3 the slide deck in a second. Mr. Young, not just yet because  
4 I have a question.

5 Does anybody have any questions?

6 (No audible response.)

7 BZA CHAIR HILL: Maybe you'll think of something  
8 when I pull this slide deck out.

9 Mr. Young, can you pull out the slide deck again,  
10 the PowerPoint that we were looking at?

11 (No audible response.)

12 (Pause.)

13 BZA CHAIR HILL: And, can you go to slide 10?

14 (No audible response.)

15 BZA CHAIR HILL: And, then Mr. Cross, I'm going  
16 to have a question to you.

17 (No audible response.)

18 (Pause.)

19 BZA CHAIR HILL: Okay, thanks, Mr. Young. If you  
20 can zoom in just a little bit even though I got to pull it  
21 up on my screen.

22 (No audible response.)

23 BZA CHAIR HILL: Thanks.

24 So, Mr. Cross, I'm just curious now. 4101 New  
25 Hampshire Avenue, that's Ms. Dominguez's home, right?

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1           So, the middle of her house, right, all the way  
2 over to that wall, which is past the adjacent garage, can you  
3 tell me kind of how far that is?

4           MR. CROSS: Yes, I can try to get an approximation  
5 here. Mr. Lee may know it off the top of his head.

6           BZA CHAIR HILL: And, then the other question  
7 then, Mr. Lee, if you want to look again, is there's that  
8 alley, and then there's the wall of the house that you all  
9 are proposing to build. And, how far away is the wall of  
10 that house from 517 Taylor Street?

11           Just rough guessing.

12           MR. LEE: Yes, I'm happy to take those dimensions  
13 right now. I've got it pulled up. I'll give you the second  
14 one first. I'll need you to repeat the first. I was pulling  
15 up the visual information.

16           But, to answer your question, our proposed  
17 structure to across the alley, the closest dimension is 28  
18 feet, and then it gets further away as the 517 neighbor looks  
19 back, as do we, as we get to the rear.

20           BZA CHAIR HILL: Okay, the first question was how  
21 far away was the middle of 4101 New Hampshire to the wall of,  
22 that blank wall, that blank wall. How far away from that?

23           MR. LEE: The middle, the direct middle of the New  
24 Hampshire property to the wall is, that we are proposing, is  
25 53 foot 8.



1 BZA CHAIR HILL: Okay. Does anybody have any  
2 questions for the applicant?

3 (No audible response.)

4 BZA CHAIR HILL: Okay, Mr. Young, can you drop the  
5 slide deck?

6 (No audible response.)

7 BZA CHAIR HILL: Okay, does anybody got anything  
8 else?

9 MR. CROSS: I just thought I'd conclude in  
10 response to the concessions that were made to address the  
11 ANC's concerns.

12 Obviously as Mr. Dungan points out, we have been  
13 continuously trying to work, and do continue to address their  
14 concerns, as well as yours.

15 The elevation on the west was modified to remove  
16 windows, and obviously the IZ unit was, was dropped from 80  
17 to 60 at the suggestion of the ANC in our first hearing, that  
18 that may make a substantial impact. But that was also the  
19 time where we, we got the letter saying that there was no  
20 change in position.

21 The client has, however, subsequently maintained  
22 the 60 percent AMI, again in good faith of trying to  
23 accommodate the ANC's and residents' positions.

24 MR. LEE: And, just one slight correction. The  
25 west, just because I'm the designer I know a lot about the

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1 building.

2           The west facade because it's on a party wall, has  
3 never had windows. However, we did hear concern about what  
4 that facade looked like. And, for the ANC, we did provide  
5 an alternate solution, which was different materials.  
6 Specifically, brick like the brick in the rest of the  
7 neighborhood.

8           This did not change how the SMD felt about the  
9 project, it did not make a difference. So, we reverted it  
10 back to the original design, which was the siding, and which  
11 is a typical solution when doing new face on lot line  
12 construction.

13           BZA CHAIR HILL: Okay, thank you.

14           All right, does anybody got anything they want to  
15 ask?

16           (No audible response.)

17           BZA CHAIR HILL: Okay. All right, once again  
18 close the hearing on the record.

19           Thanks, Mr. Young.

20           All right, we're just not going to make everybody  
21 happy on this one. Like I don't know you know, I mean I  
22 think even after talking with them more, like I just wanted  
23 to see how far away those homes were from that blank wall  
24 that doesn't have any windows on it, and it sounds as though  
25 they did propose brick, and the ANC said no anyway still.

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1           The ANC, they were at 80 percent AMI, they came  
2 down to 60 percent, and the ANC still said no, and they  
3 stayed at the 60 percent.

4           So, I mean it's like an onion, just more and more  
5 getting peeled back. I don't think you know, I don't know  
6 if they can do a two-story thing. I don't know if a two-  
7 story thing is going to change anything. You're still is  
8 you're still going to have something there where right now  
9 they got nothing.

10           So, I'm going to make a proposal but, okay, well,  
11 we'll go around the horn. Chairman Hood?

12           ZC CHAIR HOOD: Mr. Chairman, for the last 10  
13 minutes unfortunately all that was we're talking past my  
14 point. My point has been missed. My point is simple, it's  
15 real simple. Everybody don't go to the ANC meeting. I keep  
16 hearing where everybody referring to the ANC.

17           As the Vice Chair mentioned, and I've always known  
18 and others I'm sure know as well, we always when you're  
19 developing something, you always talk to the neighbor to the  
20 left, the neighbor to the right, the neighbor in the front  
21 and the neighbor in the back.

22           That was my whole issue. It had nothing to do  
23 about the ANC. The ANC made have been 10 blocks away. I'm  
24 talking about the most affected people, that's what I'm  
25 talking about. I'm not talking about the, we keep going back

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1 to the ANC.

2           So, I think I know where we are but I just think  
3 the last 10 minutes was a big waste of time. I had one  
4 question for Ms. Dominguez, and she answered it, and there  
5 was hope there and I'll leave it alone.

6           And, you're right, we don't go by just one. Well,  
7 sometime we do because it works out, but anyway, I'll leave  
8 it at that.

9           Thank you.

10           BZA CHAIR HILL: Well, I get to be the bad guy.

11           Okay, I'm going to make a motion to approve  
12 Application No. 20476 as captioned and read by the secretary,  
13 and ask for a second, Ms. John.

14           VICE CHAIRPERSON JOHN: Second.

15           BZA CHAIR HILL: The motion made and seconded.

16           Mr. Moy, if you could take a roll call please.

17           MS. SHANNON: Ridiculous.

18           BZA CHAIR HILL: Oh, really? Really? That's,  
19 that is inappropriate.

20           MR. MOY: Mr. Young, could you remove our guest  
21 from the room, please?

22           (No audible response.)

23           MR. MOY: When I call out each of your names, if  
24 you would please respond with a yes, no, or abstain to the  
25 motion made by Chairman Hill, to approve the application for

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1 the relief being requested.

2 The motion to approve was seconded by Vice Chair  
3 John.

4 Zoning Commission?

5 (Pause.)

6 ZC CHAIR HOOD: You didn't call my name, but pass  
7 and come back to me, please.

8 MR. MOY: Okay, you figured out --

9 (Simultaneous speaking.)

10 MR. MOY: That's fine.

11 (Simultaneous speaking.)

12 ZC CHAIR HOOD: In this case, I want my name  
13 forgotten.

14 MR. MOY: You were reading my mind, Mr. Chairman.  
15 Mr. Smith?

16 MEMBER SMITH: Yes.

17 MR. MOY: Mr. Blake?

18 MEMBER BLAKE: (No audible response.)

19 MR. MOY: Mr. Blake?

20 MEMBER BLAKE: Yes.

21 MR. MOY: Vice Chair John?

22 VICE CHAIRPERSON JOHN: Yes.

23 MR. MOY: Chairman Hill?

24 BZA CHAIR HILL: Yes.

25 MR. MOY: Zoning Commission Chair Anthony Hood?

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1           ZC CHAIR HOOD: Reluctantly, yes. But I want  
2 reluctantly in front of it. I know it can't be, but  
3 reluctantly, yes.

4           MR. MOY: Therefore, Mr. Chairman, staff would  
5 record the vote as five to zero to zero, and this is made on  
6 the motion made by Chairman Hill to approve the application  
7 for the relief requested.

8           The motion to approve was seconded by Vice Chair  
9 John. Also in support of the motion to approve is Zoning  
10 Commission Chair Anthony Hood, Mr. Smith, Mr. Blake, Vice  
11 Chair John, and Chairman Hill.

12           The motion carries on a vote of five to zero to  
13 zero.

14           BZA CHAIR HILL: Okay, great. Thank you, Mr. Moy.

15           All right, do you all want to try to do one more  
16 and take lunch, then Chairman Hood can go, or do you want to  
17 take lunch?

18           (No audible response.)

19           BZA CHAIR HILL: You want to take lunch?

20           (No audible response.)

21           BZA CHAIR HILL: Nobody's saying anything.

22           MEMBER SMITH: Chairman Hood, how do you feel  
23 about that?

24           ZC CHAIR HOOD: Since I've punished you all  
25 already, you all can take lunch. I'll be fine.

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1 VICE CHAIRPERSON JOHN: Thank you, Commissioner  
2 Hood.

3 BZA CHAIR HILL: All right, so we'll see, let's  
4 try, I mean I don't know, 2:15, let's 2:20. Let's try to  
5 take a short lunch.

6 Okay, thank you.

7 (Whereupon, the above-entitled matter went off the  
8 record at 1:48 p.m. and resumed at 2:33 p.m.)

9 BZA CHAIR HILL: Mr. Moy, if you want to call us  
10 back in and call our next case.

11 MR. MOY: The Board has returned to its public  
12 hearing session after a quick lunch recess, and the time is  
13 at or about 2:33 p.m.

14 The next case application before the Board is  
15 Number 20389 of Samuel Medeiros and Jessica Ellis. This  
16 application has been advertised and captioned for -- and is  
17 amended for special exception from the side yard  
18 requirements, Subtitle D, Section 206.2, area variance from  
19 the minimum lot dimension requirements of Subtitle D, Section  
20 302.1.

21 This would subdivide the property into two lots  
22 and construct a new detached principal dwelling unit with a  
23 detached two-story accessory garage at a new lot in the R-1-B  
24 zone, property located at 1915 Shepherd Street, Northeast,  
25 Square 4194, Lot 841.

1 As the Board will recall, you last heard this at  
2 your hearing on July the 28th and continued the hearing to  
3 October 6th. And at that point, the Applicant requested  
4 additional time, and so the hearing was continued to today,  
5 November 3rd.

6 And that's all I have for you, Mr. Chairman.

7 BZA CHAIR HILL: Okay. Great. Thank you, Mr.  
8 Moy.

9 Mr. Bello, can you hear me?

10 MR. BELLO: Yes, Mr. Chairman.

11 BZA CHAIR HILL: Could you please introduce  
12 yourself for the record?

13 MR. BELLO: Toye Bello representing the Applicant.  
14 My address is 1917 Benning Road, Northeast.

15 BZA CHAIR HILL: Okay. So, Mr. Bello, you have,  
16 still, opposition from the Office of Planning, the ANC. Is  
17 that correct?

18 MR. BELLO: That's correct.

19 BZA CHAIR HILL: Okay. All right. Well, I'm  
20 going to give you, then, time to give your presentation. And  
21 I've got 15 minutes on the clock so I know where we are. You  
22 can begin whenever you like.

23 MR. BELLO: Okay. If Mr. Young would please bring  
24 up the PowerPoint presentation.

25 Okay. So at the last hearing, the Board had



1 requested clarification on three matters, one of which is the  
2 implication of or import of the 1977 Corporation Counsel  
3 opinion. The other was for the Applicant to illustrate  
4 compliance with all of the development standards other than  
5 the areas of relief that we're looking for.

6 And the third was to brief whether or not  
7 Subsection C, Section 3.02.1, was applicable and whether  
8 additional relief was required from them. With that, I'll  
9 go to the second page.

10 The only other thing that has changed from the  
11 original application is that we're now seeking special  
12 exception from the side yard requirements rather than an area  
13 variance. So the relief is for the area variance to  
14 subdivide the lot and the special exception from the side  
15 yard setback.

16 Next page, please.

17 This slide essentially illustrates how the  
18 development complies with all of the development standards,  
19 again, other than the areas of relief that the Applicant  
20 seeks. This table breaks down those development standards  
21 that are applicable to the two lots, Lot A and Lot B.

22 Next page, please.

23 So I'm going to start with the 1977 Corporation  
24 Counsel opinion because I think that presents the context of  
25 this application in its entirety. So I'll sort of synthesize

1 the conclusions out of that opinion. Some of them are quoted  
2 verbatim. So these are the conclusions as I synthesize them.

3 The creation of an A&T lot -- that's an assessment  
4 and tax lot -- is not a division within the minimum reach of  
5 Section 1302.2. Section 1302.2 is the precursor section to  
6 Subtitle C, Section 302.1, under ZR 16.

7 And A&T lots are not controlled by Section 1302.2  
8 based on a review of the statutory and regulatory bases for  
9 several description of land in the district. The two land  
10 descriptions of pertinence here are lots of record, or record  
11 lots, and assessment and tax lots, or A&T lots.

12 A record lot is a particular piece of property  
13 designated by lot and square in the official records of the  
14 District of Columbia Surveyor.

15 Next page.

16 The designation of record lots is controlled by  
17 the provisions of Section 1-601, D.C. Code, 1973 Edition.  
18 And the District of Columbia subdivision regulations  
19 promulgated pursuant to Section 101-601 from 6-615 of that  
20 same code.

21 A record lot is created by subdivision, and each  
22 lot must comply with the criteria set forth under relevant  
23 sections of the zoning regulations in order to be so  
24 designated and recorded. The purpose and intent of the  
25 record lot system is to implement the orderly development of

1 land -- and whatever is in quotation marks is verbatim  
2 excerpts from the Corporation Counsel opinion.

3           The purpose and intent of the record lot system  
4 is to implement the orderly development of land by providing  
5 for specific land subdivision controls. This system is the  
6 ground floor on which the specific land-use controls of the  
7 zoning regulations are built. Therefore, zoning regulations  
8 provide that building permits for erection, construction, or  
9 alteration of structures will not be issued unless such  
10 structures are located on record lots. That's 58 Section  
11 8103.2. Under current regulations, that's Subtitle A,  
12 Section 301.3.

13           Next slide, please.

14           And this is the verbatim conclusion of that  
15 opinion. Thus, it is clear that the record lot system and  
16 the zoning regulations are integral parts of a regulatory  
17 scheme to control development in the District of Columbia,  
18 and ownership of land plays no part in that scheme, with  
19 emphasis. Ownership of land plays no part in that scheme.

20           Assessment and tax laws, on the other hand, serve  
21 no land-control purpose but are merely ownership descriptions  
22 for assessment and taxation purpose. The designation of A&T  
23 lots is governed by Section 47-701 and 47-703, D.C. Code,  
24 1973 Edition. The distinction is that the laws that govern  
25 these two instruments are totally separate.

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1 Next slide, please.

2 This is a graphic illustration of the preceding  
3 slides. So from the left, which is the current assessment  
4 and Tax Lot 0841, which was created in 1977, by the way --  
5 is the ownership description of this property that  
6 Corporation Counsel opinion points to plays no regulatory  
7 scheme in the zoning regulations.

8 To the right is a color-coded scheme of the three  
9 record lots that existed and still exist, essentially, on  
10 this property, and the sliver of a tax lot. The purpose of  
11 this slide is to establish the distinction between what the  
12 Board should be looking at, which is the record lot  
13 configuration of this property, rather than the tax lot  
14 configuration of the property.

15 Obviously, that changes the narrative if it seems  
16 like the owner wants to go from a large lot to a much smaller  
17 lot. But in fact, if we're to rely on the Corporation  
18 Counsel opinion, the context within which the Board should  
19 be looking at this application is its record lot  
20 configuration in the context of what the application seeks  
21 to accomplish, which is the center illustration that's  
22 center.

23 Thus, the Applicant had argued previously that the  
24 application before the Board is in fact a reconfiguration of  
25 three extremely nonconforming record lots and that the result

1 of the subdivision is actually an improvement in the  
2 nonconforming configuration of the record lots that the Board  
3 is looking at.

4 So next slide, please.

5 The Applicant argues based on the foregoing that  
6 assessment and tax division of such a property is not  
7 relevant to the zoning regulations. And these are excerpts,  
8 again, from the Corporation Counsel opinion. Whereas the  
9 word lot in Subtitle C 302.1 may be construed to include  
10 assessment and tax lots, not so the word divide, which refers  
11 only to the subdivision process by which record lots are  
12 created.

13 The creation of an assessment and tax lot is not  
14 a division. It is merely the recognition of ownership of a  
15 particular piece of real property for assessment and taxation  
16 purposes as required by law. Applicant asserts that it is  
17 therefore misleading for purposes of subdivision relief  
18 sought to view the property in the context of its A&T  
19 configuration rather than its record lot configuration.

20 The application before the Board is the  
21 reconfiguration of three substantially nonconforming record  
22 lots and the sliver of an A&T, assessment and tax, lot into  
23 two more and better conforming record lots in compatibility  
24 with the average width of all other lots in the square of  
25 location. Applicant refers the Board to Exhibit 30 for the

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1 average width of lot and side yard in the 1900 block,  
2 Shepherd Street.

3 Next slide, please.

4 This particular A&T lot was created in tax  
5 assessors' records in 1971. There's some significance to  
6 that because even ZR 16 recognizes the distinction between  
7 assessment and tax lots that were created prior to May 12,  
8 1958, and those that were created after May 12, 1958.

9 Why is this relevant? This is relevant because  
10 the subject property is uniquely the only property to have  
11 undertaken an assessment and tax division regime in its  
12 square of location after May 12, 1958. The A&T division, in  
13 fact, made more nonconforming all three record lots and the  
14 sliver of A&T lot by reduction in respective lot area.

15 Assessment and Tax Lot 0833 effectively reduced  
16 the lot area of Lots 9, 10, 11, and former Lot 801. Article  
17 1, Section 4(c) of the subdivision regulations states no part  
18 of the lot of record shall be sold or transferred unless,  
19 prior thereto, such lot shall be subdivided in conformity  
20 with these regulations, nor shall any subdivision containing  
21 any part of such lot be admitted to record unless the  
22 requirements of this paragraph are being complied with.

23 Subtitle C 302.1(a) and (b), the ZR 16 successor  
24 to this 58 Section 1302.2, now permits recordation of lots  
25 not in compliance with the density lot controls under

1 specified conditions, neither of which applies to the subject  
2 property.

3           A&T Lot 0833, which reduced the Record Lots 9, 10,  
4 and 11, has been sold to a separate party, hence the  
5 Applicant's practical difficulty and uniqueness.

6           Next page, please.

7           Now, this is a graphic illustration of the  
8 preceding slide. This is a record of the plat of computation  
9 that was filed with the Office of the Surveyor that  
10 reconfigured Record Lots 9, 10, 11, and that little sliver  
11 that used to be 801. So starting from your left, if the  
12 Board looks at the bottom of this document, the dates that  
13 that tax lot regime was created is in 1971.

14           The middle illustration is a color coordination  
15 of the document to your left. The little sliver at the  
16 bottom of the four lots shaded in green is in fact Lot 0833  
17 that was created in 1971. And the illustration or the  
18 graphic to your right is the current configuration of Lot  
19 841, which again was created in 1971. And you can see where  
20 the A&T lots essentially change numbers from 833, 832, 31,  
21 and 33.

22           Next slide, please.

23           This is not very legible, but I'll try to walk the  
24 Board through the point that we're trying to make here, which  
25 is what we did in the last slide. So starting with the

1 zoning lab, I think it's important to know that the zoning  
2 lab was established on the basis of the tax and assessment  
3 records of property in the city.

4           Now, why one would understand the efficacy of  
5 doing that -- but what it actually establishes is the record  
6 of ownership of property and really contradicts the zoning  
7 tool because the zoning tool would have been to also  
8 understand that there are record lots that may underlie some  
9 of these tax lots. So for zoning purposes, 841 may look like  
10 a single lot, but based on the Corporation Counsel's opinion,  
11 it is not. It only establishes the ownership interest of  
12 that property, and it is simply not a zoning instrument.

13           The Lot 833 that was sliced off of the old lots,  
14 9, 10, 11, and 801, is actually a lot that has been combined  
15 with Lot 836 to the south of this property. Now, while the  
16 zoning map is showing Lot 836 as a tax lot, this lot number  
17 in fact does not exist in the Surveyor's records, and it is  
18 a combination of 833 and two record lots, 40 and 39.

19           So as it is, the owner of 836 would considerably  
20 sell off any of those record lots, fee simple. What is my  
21 point? My point is that when you look at the average size  
22 of lots in this block, in this square, as was indicated by  
23 the table -- I think that was Exhibit 10. When these lots  
24 are looked at in their zoning configuration, the average lot  
25 size is about 4,000, 4,500.

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1           And what the Applicant wants to accomplish by  
2 subdividing the three record lots would actually be  
3 compatible with that average in that square or even exceed  
4 the average lot area and, of course, the lot width. Now, the  
5 Applicant does not seek relief from the minimum lot area, but  
6 from the lot width.

7           So what is being accomplished by this subdivision  
8 is actually compatible with what prevails on average in this  
9 block when each of these lots are looked upon in their zoning  
10 configuration. So that's the point of this slide.

11           Next slide, please.

12           In the first hearing, the Applicant had made the  
13 argument that by case law, the zoning history of a property  
14 can be preferred as its extraordinary situation or condition  
15 of property. So Applicant submits that the interplay between  
16 the subdivision history here of the existing record lots and  
17 the tax lots constitutes zoning history and that it is also  
18 the extraordinary situation or condition of property.

19           And that history is unique to this property in  
20 that square. As I've mentioned, A&T Lot 0833 was created in  
21 1971 and carved out of Record Lots 9, 10, 11, and former Lot  
22 801. A&T Lot 0833 is now owned by the current owner of the  
23 A&T Lot 084, which is the Applicant's property. Tax Lot 0833  
24 is now part of Tax Lot 836, and Tax Lot 836 consists of Lots  
25 39, 40, and AT -- and that little sliver that was cut out of

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1 the three record lots.

2           As we speak, this tax lot does not exist in the  
3 records of the District Surveyor. The creation of Tax Lot  
4 836, following the same argument, does not constitute a  
5 record lot subdivision. So Record Lots 39 and 40 remain  
6 valid and are transferable fee simple.

7           Next slide, please.

8           This deals with the applicability of Subtitle C,  
9 Section 302.1. That section basically says when a lot is  
10 divided, the division shall be effective in a manner -- and  
11 divided here means a record lot subdivision, obviously. A  
12 division shall be effective in a manner that would not  
13 violate the provision of title for yards, courts, other open  
14 space, minimum lot area, minimum width, minimum area, floor  
15 area ratio, lot occupancy, parking, everything else except --  
16 and then it has two exceptions.

17           Exception A states that the non-alley lot recorded  
18 as a tax lot with the Office of Tax and Revenue prior to May  
19 12, 1958, which shared an underlying record lot with an alley  
20 tax lot that has been converted to an alley record lot under  
21 Subtitle C 306.3 may be converted to a record lot without  
22 complying with these development standards.

23           Now, if the Board goes back to the little sliver  
24 of Tax Lot 833, which was created in 1971, that lot would  
25 have qualified by definition as an alley lot. But because

1 of its tax lot combination with Lots 40 and 39, it is  
2 temporarily by configuration of its tax lot not an alley lot.

3 But I would have the Board weigh the fact that  
4 since Lot 40 has not been subdivided in a true subdivision  
5 for zoning purposes, Lot 40 could still be sold off while  
6 creating another tax lot that would mimic what used to be  
7 0833. And this the owner of 836 will be able to do legally.

8 So this provision is not applicable to the current  
9 lot because, temporarily, what used to be 0833 is not an  
10 alley lot but can be recreated. Subtitle B, a non-alley lot  
11 recorded as a tax lot with the Office of Tax and Revenue  
12 prior to September 6, 2016, which shared an underlying record  
13 lot with an alley tax lot that has been converted to an alley  
14 record lot under Subtitle C, Section 306.4, may be converted  
15 to a record lot if granted by special exception by the Board.

16 This provision is not applicable to --

17 VICE CHAIRPERSON JOHN: Mr. Bello, can I ask you  
18 a question before you --

19 MR. BELLO: Yes, ma'am.

20 VICE CHAIRPERSON JOHN: -- because I'm trying to  
21 understand Section 302.1. Does it say where a record lot is  
22 divided, or it just says where a lot is divided?

23 MR. BELLO: So it does say that where a lot is  
24 divided. But if you go back to the Corporation Counsel  
25 opinion, when the word divided is used here in the zoning

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1 context, they're talking about a record lot subdivision, not  
2 an assessment and tax lot division. Does that answer your  
3 question?

4 VICE CHAIRPERSON JOHN: We can go on. Not really,  
5 but we can go on because there's a lot of stuff in here, and  
6 it's kind of hard for me to read it because of the black  
7 background. So my eyes are kind of just skipping over  
8 everything. But if we could go back to that slide that shows  
9 the blue and the yellow and the pink underlying record lots  
10 and what you say is a tax lot in green at the bottom -- did  
11 I get that right?

12 MR. BELLO: I'm trying to find the --

13 VICE CHAIRPERSON JOHN: Mr. Young, it is a few  
14 slides back.

15 MR. BELLO: It's on slide 10.

16 VICE CHAIRPERSON JOHN: Right. I'm just trying  
17 to understand what we're doing, and then I can factor in all  
18 of the legal opinions. So I don't remember how you're  
19 proposing to subdivide the property. Are you subdividing  
20 just the blue part and excluding the section with the garage?  
21 And is the existing lot going to be the pink and the yellow  
22 lot? Is that what you're proposing?

23 MR. BELLO: No, this slide does not illustrate  
24 that. The purpose of this slide is really just to show how  
25 Record Lots 9, 10, 11, and the little sliver of a lot

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1 transformed into, first of all, initially, five tax lots, and  
2 then to two tax lots. Right?

3 So the little sliver of lot at the bottom of the  
4 property is Lot 833 as a sliver of a lot that was cut out of  
5 Record Lots 9, 10, and 11 in 1971.

6 VICE CHAIRPERSON JOHN: Okay. So I'm still trying  
7 to find out if in your proposed subdivision -- is the new lot  
8 going to be just the part in blue minus the part with the  
9 garage?

10 MR. BELLO: Let me find the slide that illustrates  
11 that a little bit better. So if we go to -- one second,  
12 please.

13 Mr. Young, if you could go to slide 7, please.

14 So this is an illustration of what we propose to  
15 do. So from the slide to the right, which shows a shadow of  
16 the existing building that crosses the division line between  
17 9 and 10 -- the existing building actually exists on 9 and  
18 a portion of 10. Right?

19 So when we look at the property in its record lot  
20 configuration, the existing building sits on two of these  
21 record lots and has an accessory structure that straddles two  
22 of the record lots also. So if you look at the -- the  
23 illustration at the center is what's proposed.

24 So a subdivision would isolate the existing  
25 building on its own independent lot, removing the lot line

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1 that crosses and traverses the existing building at this  
2 point. And the panhandle part of the subdivision is to also  
3 isolate the accessory building onto one lot of record,  
4 leaving -- the yellow part will be the newly created lot.

5           So the Applicant's argument is that they're  
6 actually improving upon the condition of the property from  
7 this current zoning configuration and that the narrative  
8 changes if, as the Office of Planning did -- look at the  
9 application before the Board. I said, the Applicant wants  
10 to take a single big lot record or a single large tax lot and  
11 create a second lot out of it, two different narratives.

12           VICE CHAIRPERSON JOHN: Thank you. So, Mr. Bello,  
13 I get that. So, basically, what you're doing is creating a  
14 record lot -- proposing to create a record lot composed of  
15 the blue part -- part of the blue and a part of the pink.

16           So, basically, you're not asking the Board to look  
17 at the underlying configuration of record lots because if  
18 that's what you were offering, then you would say that this  
19 blue underlying record lot is preexisting, and so you could  
20 build on it. But that's not what you're asking for. You're  
21 asking --

22           (Simultaneous speaking.)

23           MR. BELLO: Exactly. We're not asking that.

24           VICE CHAIRPERSON JOHN: -- finish. Right. You're  
25 asking to subdivide a lot -- right -- a tax lot which you say

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1 is not relevant into two lots, including one record lot and  
2 a portion of another underlying record lot. And that's just  
3 what I wanted to clarify because I was getting a little  
4 confused. So I don't have any more questions.

5 MR. BELLO: Thank you.

6 Mr. Paul, where were we? I'm sorry.

7 BZA CHAIR HILL: While he's looking up there, can  
8 I ask you guys, can we just take like a three-minute break?  
9 I need to take a three-minute break.

10 (Whereupon, the above-entitled matter went off the  
11 record at 3:09 p.m. and resumed at 3:11 p.m.)

12 BZA CHAIR HILL: I just wanted to make sure. I  
13 had to go back and check. This is the one that I read into  
14 it. So, I was following along with Mr. Bello. And I just  
15 wanted to make sure this is the one that I read into it,  
16 because I wasn't here at the end of the day that day. I  
17 might not have even been here that day. But I read into this  
18 case. So, I just wanted to put that on for the record. But,  
19 since I wasn't actually here during the day, I'm going to  
20 rely on my fellow Board members a little bit for more of  
21 their help.

22 But, Mr. Bello, go ahead and continue.

23 MR. BELLO: Thank you, Mr. Chair. So, Ms. Page  
24 essentially was indicating why this provision would not be  
25 applicable to the -- to the subject property, because neither

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1 of these two subsections are applicable.

2 And, this is a general provision stating the  
3 obvious. So, when the Applicant seeks to subdivide in  
4 noncompliance with any of these provisions, the pertinent  
5 relief is from that section that governs the relief from with  
6 the Applicant seeks.

7 So, this -- this does not in any way foreclose the  
8 Applicant's ability to request the specific relief that would  
9 allow the subdivision that would not be in compliance with  
10 this provision.

11 So, I think that's an element of redundancy in  
12 asking for this relief. And then asking for the specific  
13 relief that would allow the subdivision anyway, if that.  
14 Next slide, please.

15 And this is essentially what I've just summarized.  
16 That Section -- Subtitle C, Section 302.1 is a general  
17 provision and not a specific one.

18 Application seeks relief for the specific  
19 provisions the proposed subdivision would not comply with.  
20 That is the lot width minimum and side yard setback set forth  
21 under these two sections respectively.

22 The Application is self-certified. Section  
23 302.1(a) is inapplicable because the subject property is not  
24 a tax lot recorded in OTR records prior to May 12, 1958, as  
25 the Applicant indicated previously.



1           So, 302.1(b) is inapplicable because the subject  
2 property does not share an underlying record lot with an ally  
3 tax lot that has been converted to an ally lot under Subtitle  
4 C, 306.4.

5           Subtitle C, 306.4 just came into effect in 2016.  
6 And this property has not undertaken any kind of application  
7 before the Board to establish an alley tax lot. Next slide,  
8 please.

9           The compliance with the three standards for the  
10 granting of a special exception, this will be with respect  
11 to the side yard special exception requested. The relief  
12 would be in harmony with the general purpose and intent with  
13 zoning regulations and zoning maps.

14           The use of the existing structure remains a single  
15 family dwelling. Use permitted in the underlying R-1-B Zone  
16 within which the subject property is located. And this  
17 structure obviously is the existing structure.

18           The closest part of the existing building is an  
19 open, unenclosed porch, hence the light and air of adjoining  
20 building of the existing building would not be unduly  
21 affected. I will let the Applicant walk you through a  
22 graphic illustration of that.

23           The faces of the existing and proposed building,  
24 the proposed building would be that which would be  
25 constructed on Lot B, if the Board grants the relief that

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1 we're asking for.

2           The faces of the existing and proposed building  
3 are separated by a distance of 15 and a half feet, a  
4 substantial distance of building depth.

5           Essentially, when the architect walks you through  
6 the project plans, you will see that the point at which the  
7 side yard is approximately 2.5 feet of the side property  
8 line, is an open porch. It's not enclosed livable space.  
9 So, it's by the neck of the effective.

10           For the substantial part of the remaining depth  
11 of the building, the two faces of the existing building and  
12 the proposed building would be more than 15 feet away  
13 combined. Next slide, please.

14           Greg, do you want to walk the Board through  
15 essentially this graphic can still illustrate that when you  
16 look at the existing building -- so, or I'll let you walk  
17 them through.

18           The point is to indicate which part of the  
19 existing building is the porch and you know, the two faces  
20 of the building that I've just indicated, would be 15 feet  
21 away.

22           MR. KEARLEY: Hi everybody, I'm Greg Kearley. And  
23 I'm --

24           BZA CHAIR HILL: I can't hear you, sir. If you  
25 can -- if you can repeat yourself.

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1 MR. KEARLEY: Can you hear me now?

2 BZA CHAIR HILL: Yeah. A little better. What's  
3 your name?

4 MR. KEARLEY: My name is Gregory Kearley. I'm the  
5 architect for the project.

6 BZA CHAIR HILL: Okay. Go ahead. I can't hear  
7 you that well. But, maybe it's just me.

8 MEMBER BLAKE: I can't hear you that well.

9 MR. BELLO: Turn your volume up a little bit.  
10 There's a volume there.

11 MR. KEARLEY: So, what Toye was talking about is  
12 when you're looking at this, this is the image on the right,  
13 the site plan on the right. Excuse me, on the left of your  
14 screen.

15 And the existing building is shaded in the ri --  
16 on the right. And if you see that building, you can see what  
17 is a screened in porch, which is not shaded.

18 So, that area is open and not conditioned space.  
19 So, that's where we have the two and a half foot setback.  
20 And then it steps back to seven feet plus, where you have  
21 conditioned space and occupiable space.

22 And so when you're looking at the configuration  
23 of the proposed new lots, the existing garage, there's a  
24 dogleg. And the existing garage remains with the existing  
25 house.

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1 And then we have a proposed new garage and new  
2 house that are shown here. Which would be on the left side  
3 of that site plan, which we're calling Lot B.

4 MR. BELLO: Okay. I might add one, I think,  
5 significant point. So, when you look at the color, color  
6 shaded plan, which reflects the recorded configuration of the  
7 property, you will see that the lot line between Lots 9 and  
8 10 actually straddles this property.

9 So again, in reconfiguring this site, the  
10 subdivision actually corrects this anomaly by moving the lot  
11 line to where this building now sits on its own isolated lot.

12 And, absent to the porch, and I'm not saying that  
13 the owner does not plan any addition at this instance, but  
14 if the owner wanted to add to this property, they could  
15 actually forego the seven feet of existing side yard that  
16 this new subdivision would create going forward.

17 BZA CHAIR HILL: Hey Mr. Bello?

18 MR. BELLO: Yes, sir?

19 BZA CHAIR HILL: How many more slides you got  
20 left?

21 MR. BELLO: What number is this?

22 BZA CHAIR HILL: Isn't it number 16?

23 MR. BELLO: I think the others can be very quick  
24 actually.

25 BZA CHAIR HILL: Yeah, okay Mr. Bello, so we can

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1 kind of get to the Office of Planning and get through our  
2 questions and everything. This is now --

3 MR. BELLO: Okay.

4 BZA CHAIR HILL: Thanks.

5 MR. BELLO: Next one, please. Will not tend to  
6 affect adversely, the general neighborhood which is  
7 characterized by single family detached structures.

8 The use of the existing building remains the same.  
9 The grant of the new use results will be a single family  
10 dwelling.

11 Neighboring properties to the north are separated  
12 by a street. To the west is the proposed new building, which  
13 acts a buffer to those properties separated by a 15-foot  
14 alley facing 19th Street.

15 There's no net change to the existing side yard  
16 to the east of the subject property. Next.

17 Will meet such conditions. There are what these  
18 conditions are as set forth under 5201.4 through 5201.7.  
19 Next page, please.

20 I could go through all of these, but it would be  
21 repetitive. I think I have made the point of the fact that  
22 the relief meets the special exception conditions, unless the  
23 Board wants me to run through the rest of the slides. Next  
24 one, please.

25 Proposed subdivision seeks to establish a new lot,

1 Lot B. Which complies with the minimum lot area for that of  
2 the underlying lot.

3 The remainder lot upon which the existing building  
4 and accessory structure will be isolated, is approximately  
5 2300 square feet in excess of the requirement amount of lot  
6 area.

7 Properties -- all properties west of Lot A are  
8 separated by Lot B and a 15-foot public alley. Those lots  
9 in fact face, front 19th Street such that the lot is adjacent  
10 to the rail yards across the alley.

11 There's no net change to the existing condition  
12 of the existing properties to the east. Next slide -- next  
13 slide, please.

14 The existing building does not propose to alter.  
15 There's no addition proposed. The side yard relief is the  
16 result of subdivision reconfiguration, which improves the  
17 separating of the nonconforming record lots. And corrects  
18 the anomaly of the existing building's property lot lines.  
19 Next slide, please.

20 Applicant believes that this is a significant  
21 enough graphic illustrations. Next slide, please.

22 Just photographs to show context of the  
23 neighborhood architecture. Next slide, please.

24 The Office of Planning report in accordance with  
25 the 1977 Corporation Counsel opinion, A&T tax lots are not

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1 an instrument of the Zoning Regulations. Hence, the record  
2 lots remain valid.

3           Applicant contends that the subject property  
4 should be viewed from the context of the existing record lot  
5 configuration. That is as three record lots each with  
6 nonconforming lot widths of 25 feet, a lot area far less than  
7 prescribed.

8           Hence, the proposed subdivision is akin to a  
9 realignment lot configuration to eliminate the anomaly of lot  
10 line straddling the existing structure, and lot width  
11 consistent with the current average in the square.

12           OP's report did not waive relevant case law. In  
13 the Applicant's belief, the unique history of the proposed  
14 58 A&T lot plat of computation in the context of the 1977  
15 Corporation Counsel Opinion.

16           Again, the lot OP refers to as 13,000 square feet,  
17 is actually Lot 836 that I've described previously there.  
18 And still retain their record lot configuration. Next slide,  
19 please.

20           Applicant submits that the Applicant has met the  
21 burden of proof for the granting of the relief. And would  
22 respectfully request that the requested relief be granted for  
23 the following reasons: consistent with case law cited,  
24 subject property is an extraordinary situation or condition  
25 of property is the result of the zoning history and the ANC

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1 plat computation with the effect of it outside the original  
2 structure.

3 Or otherwise, valid record lots which have no --  
4 which have not undertaken a true zoning related record lot  
5 subdivision.

6 Applicant contends that the Corporation Counsel  
7 opinion contend -- constrains the BZA to review of the  
8 proposed subdivision and the context of its instrument  
9 specific to the purpose of the zoning regulations. That is,  
10 the regular configuration and not the A&T configuration.

11 Subdivision effectively improves upon the  
12 nonconforming configuration of the existing lots. The  
13 proposed lot width is consistent with neighborhood average.

14 Subtitle C, 301.1 admits substandard lots, record  
15 lots to be included as a matter of right, regardless of size,  
16 subject to specific conditions.

17 The additional house which is consistent with the  
18 general rule of increasing the number of residents in the  
19 district.

20 And that will be our presentation today. Thank  
21 you.

22 BZA CHAIR HILL: Okay. Thanks Mr. Bello. Mr.  
23 Young, if you could drop the deck. Thank you.

24 Mr. Bello, who's here with you? I neglected --  
25 I have the architect, right? And who else is here with you?

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1 MR. BELLO: I don't believe anybody else.

2 MR. MEDEIROS: So, no. I'm here. One of the  
3 owners.

4 MR. BELLO: Oh, I'm sorry.

5 BZA CHAIR HILL: Could you introduce yourself,  
6 please, for the record?

7 MR. MEDEIROS: Yeah. I'm Sam Medeiros. I am an  
8 owner of 1915 Shepherd Street, Northeast.

9 BZA CHAIR HILL: Okay. Great. All right, so  
10 before I ask the Board their questions for the Applicant, let  
11 me quickly turn to the Office of Planning.

12 Ms. Vitale, are you there?

13 MS. VITALE: Yes. Good afternoon, Mr. Chair.

14 BZA CHAIR HILL: Could you give us your report,  
15 Ms. Vitale?

16 MS. VITALE: Certainly. Good afternoon Mr. Chair,  
17 Members of the Board, Elisa Vitale with the Office of  
18 Planning.

19 OP has reviewed the Applicant's supplemental  
20 filings. We appreciate the presentation today. But, we are  
21 still unable to recommend approval of the request to  
22 subdivide the property into two nonconforming lots.

23 That would create a nonconforming side yard for  
24 the existing detached building at 1915 Shepherd Street. We  
25 don't believe the variance test has been met.

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1 With respect to the side yard special exception,  
2 that is a change in the relief request, the Applicant had  
3 originally requested a variance from the side yard  
4 requirement.

5 And they're now requesting a special exception  
6 under 5201. We didn't provide a full analysis of this in our  
7 supplemental report, because we couldn't get over the first  
8 hurdle of the subdivision variance.

9 But, we would note that side yard special  
10 exception relief under 5201 is available for, you know,  
11 certain areas of relief, including lot occupancy in yards  
12 that result on -- from an addition to an existing building,  
13 or construction of a new building.

14 So, we would just note that we don't believe that  
15 5201 relief for that side yard is the appropriate avenue of  
16 relief. So, we just wanted to note that on the record. And  
17 that's also included in our supplemental report.

18 I will end there. But, I'm certainly happy to  
19 answer any questions or address other specific issues if the  
20 Board has questions. Thank you.

21 BZA CHAIR HILL: Okay. Does the Board have any  
22 questions of the Office of Planning?

23 (No audible response.)

24 BZA CHAIR HILL: Does the Applicant have any  
25 questions of the Office of Planning?

1 MR. BELLO: Just a couple. Ms. Vitale, thank you  
2 for your report. So, if you -- if you look at the property  
3 in its record lot configuration, does the property have a  
4 side yard now?

5 MS. VITALE: I'm not sure I understand the -- I --

6 MR. BELLO: Okay. Let me rephrase it. So, --

7 MS. VITALE: The property currently spans two --  
8 the principal building spans two record lots. And the  
9 accessory building spans two record lots.

10 MR. BELLO: Okay. So, the -- the lot line between  
11 9 and 10 that straddles the building, how -- how would you  
12 describe that?

13 Is that -- does that have any importance, does the  
14 building have a side yard now or not?

15 MS. VITALE: Well, I think we would look at this  
16 now as being defined by the A&T lot. I understand that there  
17 are a number of underlying record lots.

18 Normally now, under the current zoning  
19 regulations, you couldn't construct a building that straddled  
20 two lots.

21 But, now you have an A&T lot, or if you want to  
22 speak just specifically based on the underlying record lots,  
23 you have three record lots plus a sliver of another that  
24 comprise this property.

25 And you have a large side yard. You have, you

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1 know, all the way up to the alley is essentially functioning  
2 as the side yard for the principal building in the existing  
3 configuration.

4 MR. BELLO: Just one more question. Do you  
5 disagree with the Corporation Counsel opinion that an A&T lot  
6 is for the purpose of ownership description, and plays no  
7 role in the developing controls and the instrument of the  
8 zoning regulation?

9 MS. VITALE: I'm not an attorney. I'm not going  
10 to weigh in on the Corporation Counsel memo.

11 MR. BELLO: So, you didn't consider that in your  
12 review?

13 MS. VITALE: We considered an application to  
14 subdivide a property into two nonconforming lots that create  
15 an additional nonconformity for an existing building. That's  
16 what we evaluated.

17 MR. BELLO: So, my question was, whether you  
18 evaluated the Corporation Counsel opinion even through an  
19 attorney at OP, no?

20 MS. VITALE: No. We evaluated your request  
21 against the standards for variance relief in the zoning  
22 regulations.

23 MR. BELLO: All right. Thank you.

24 BZA CHAIR HILL: Okay.

25 MR. BELLO: No further questions.

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1 BZA CHAIR HILL: Okay. Thanks Mr. Bello. Mr.  
2 Young, is there anyone here wishing to testify?

3 MR. YOUNG: Yes. I also have the ANC Commissioner  
4 who is calling in.

5 BZA CHAIR HILL: Okay.

6 MR. YOUNG: If you want to do her first.

7 BZA CHAIR HILL: Yeah. Could you -- can I hear  
8 from the Commissioner first? Hi Commissioner, can you hear  
9 me?

10 MS. HALL-CARLEY: Yes. Hi, how are you?

11 BZA CHAIR HILL: Good, thank you. How are you?

12 MS. HALL-CARLEY: I'm doing fabulous.

13 BZA CHAIR HILL: Good. Could you introduce  
14 yourself for the record, please?

15 MS. HALL-CARLEY: Yes. My name is Commissioner  
16 Gayle Hall-Carley. I am 5B01 Commissioner. And I am calling  
17 in today to weigh in, although I did send in a resolution.

18 I am calling in to weigh in, after hearing  
19 everything I heard today, as well as the information that I  
20 received last night from the architect.

21 BZA CHAIR HILL: Okay. Do you want to give us any  
22 more testimony, Commissioner?

23 MS. HALL-CARLEY: I don't want to give any more  
24 testimony. I just want to -- just reiterate why I did not  
25 allow the architect and the consultant to return to the ANC.

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1           Because I felt that even after speaking to my  
2 colleagues, nothing has changed. And so, we still stand  
3 behind the resolution objecting to this project.

4           BZA CHAIR HILL: Okay. Thanks Commissioner. Does  
5 the Board have any questions for the Commissioner?

6           (No audible response.)

7           BZA CHAIR HILL: Does the Applicant have any  
8 questions for the Commissioner?

9           MR. BELLO: No, Mr. Chairman.

10          BZA CHAIR HILL: Okay. Commissioner, do you want  
11 to hang on? Well come back to you. Or I can hear you're  
12 driving.

13          MS. HALL-CARLEY: Oh, I'm fine.

14          BZA CHAIR HILL: Okay. We'll --

15          MS. HALL-CARLEY: I'm fine with driving. I'm  
16 fine.

17          BZA CHAIR HILL: All right. You be safe, don't --  
18 anyway. And then just, we'll just put you on mute and if we  
19 have any questions for you, we'll come back. Okay?

20          MS. HALL-CARLEY: Okay. Sure.

21          BZA CHAIR HILL: Okay. Mr. Young, who is here to  
22 testify?

23          MR. YOUNG: Jennifer Moss.

24          BZA CHAIR HILL: Ms. Moss, can you hear me?

25          (No audible response.)

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1 BZA CHAIR HILL: Ms. Moss?

2 MS. MOSS: Hi, I'm sorry. I had a little  
3 difficulty unmuting myself.

4 BZA CHAIR HILL: That's all right. Could you  
5 introduce yourself for the record, please?

6 MS. MOSS: Yes. My name is Jennifer Moss. I am  
7 a neighbor at 1931 Shepherd Street. I --

8 BZA CHAIR HILL: Ms. Moss, just -- just before you  
9 start, let me let you know, as a member of the public, you'll  
10 have three minutes to give your testimony. And you can begin  
11 whenever you like.

12 MS. MOSS: Okay. Thank you. So, I belong to  
13 probably the --

14 BZA CHAIR HILL: Ms. John? Ms. John, you have a  
15 question?

16 VICE CHAIRPERSON JOHN: I was wondering, are you  
17 recording, sir? I think that's the owner. And --

18 BZA CHAIR HILL: Oh, yes. Mr. Medeiros?

19 VICE CHAIRPERSON JOHN: Mr. Medeiros, are you  
20 recording?

21 MR. MEDEIROS: Oh, sorry about that. No. No, no.  
22 My apologizes. I am not recording. I'm sorry.

23 VICE CHAIRPERSON JOHN: Thank you. All right.

24 BZA CHAIR HILL: Thank you. Ms. Moss, can you go  
25 ahead and give your testimony?

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1 MS. MOSS: Sure. I'm part of one of probably the  
2 oldest family to live on this block. My family's been here  
3 for about 60 or so years. So, we've -- our house has been  
4 here since before some of these other houses were even built.

5 I take issue with the statement that there is no  
6 undue -- there's no undue burden on the houses that are  
7 downhill from this proposed construction.

8 Previously with the house that -- that is existing  
9 there, with the changes that they've made, houses down the  
10 hill have experienced water issues.

11 Such as the house next door, Ms. Mitchem's house,  
12 having to have thousands of dollars of -- of changes made due  
13 to the -- due to what that developer who purchased their  
14 house prior to Medeiros, and is now pushing for this new  
15 house to be built, due to their actions. Our neighbors have  
16 experienced some property issues, which have been expensive.

17 Even as far as my house, we -- as I said, we've  
18 been here for a very long time. And we've experienced  
19 weeping in the basement, where there has not been any prior  
20 to this.

21 So, the things that -- I've also, as -- in terms  
22 of experience, on -- because our house is on a hill, it's  
23 very steep. We get a lot of runoff.

24 But also, in terms of building and shifting, when  
25 the house next door to us was built, they -- there were all

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1 sorts of assurances that it would not affect our foundation.  
2 And -- or any, you know, any part of our house. However, we  
3 experienced foundation shifting and damage to our house due  
4 to the hill and construction on the hill.

5 So, I believe the house -- those two houses will  
6 be closer together than the house -- then our houses are.  
7 So, those are also concerns.

8 But, our -- I just wanted to -- to bring forth  
9 some of the con -- that's just some of the concerns that I  
10 have, my family has, and other neighbors have expressed.

11 We -- so, that's -- that's mostly what I wanted  
12 to say. This has been brought up by the homeowners currently  
13 to the Applicants. And they know about those concerns.

14 But, it just remains that this is going -- this  
15 is an issue. And there can't be -- what they've done so far,  
16 has caused damage.

17 Not them specifically, but the developer who  
18 purchased the house and then sold that property to them. And  
19 who is now trying to do this new house, what they've done so  
20 far has caused damage to other neighbors.

21 And we are concerned about continued issues down  
22 the hill.

23 BZA CHAIR HILL: Okay. Thanks Ms. Moss.

24 MS. MOSS: Yes.

25 BZA CHAIR HILL: Are you the adjacent property to

1 the lot?

2 MS. MOSS: No. Actually, we are, I believe, two  
3 doors down, three doors down. And even down -- because it's  
4 such a steep hill, we're also having moisture issues.

5 Which, in -- as long as my fam -- I'm a third  
6 generation here, not including the person who owned it before  
7 my grandparents was their -- was their family member.

8 So, in this time, we have not had that -- those  
9 types of issues. But, with the things going on up the hills,  
10 we're having -- we're seeing moisture problems.

11 The house next door is owned by Ms. Quiana  
12 Mitchem. And she has expressed to us that she's had to spend  
13 thousands of dollars of remediation because of moisture  
14 problems in the basement and things like that.

15 So, we are being affected by the changes that they  
16 are making. So, those things concern us, especially, you  
17 know, building a whole house is -- is further decreasing the  
18 porous, the porous area to -- to absorb water.

19 So, we're getting another nonporous structure  
20 here, and more water down the hill. So, that's one huge  
21 thing. But, there are -- I mean, other people have other --  
22 other practical day to day issues with this proposal.

23 That's -- that's what I can say for now. Yeah.

24 BZA CHAIR HILL: Okay. Great. Thanks Ms. Moss.

25 MS. MOSS: Thank you.

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1 BZA CHAIR HILL: Does anybody have any questions  
2 for Ms. Moss?

3 (No audible response.)

4 BZA CHAIR HILL: Okay. All right, Ms. Moss, thank  
5 you for your testimony.

6 MS. MOSS: I appreciate the opportunity.

7 BZA CHAIR HILL: All right. Mr. Young, if you can  
8 excuse Ms. Moss. Okay. Does anybody have any further  
9 questions for the Applicant? Mr. -- Commissioner Hood?

10 ZC CHAIR HOOD: Thank you, Mr. Chairman. I'll be  
11 very brief. Mr. Bello, you have relied a lot on the  
12 Corporation Counsel's letter. A lot.

13 I think that was the gist of your whole argument.  
14 Which is kind of acting with the Office of Planning basis  
15 then.

16 But, let me ask you, quick question. Is the  
17 Corporation Counsel's opinion binding?

18 MR. BELLO: Yes, it is. And on the basis of that  
19 opinion, which still stands until today, owners of -- owners  
20 of substandard record lots, of which tax lots have been  
21 created, are actually able to preserve their rights to the  
22 record lots.

23 Essentially, what the Corporation Counsel's  
24 opinion is saying is that the fact that the tax region is  
25 created for a lot, does not eviscerate the record lot.

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1 And that the record lot can only be eliminated or  
2 reconfigured by a proper zoning subdivision process, which  
3 culminates in the recommendation of that proper lot with the  
4 surveyor's lots.

5 Obviously assessment and tax lots are not required  
6 to be recorded as surveyor's lots.

7 ZC CHAIR HOOD: I get all that. I get that, Mr.  
8 Bello. Save us some time. I know that the Board has many  
9 more cases after this. I get that.

10 But my interpretation of the Corporation Counsel's  
11 opinion is not binding. And that it's highly respected. And  
12 I will stand to be corrected if I'm incorrect.

13 But, that's just my interpretation that I have  
14 learned over the years. But, I'll leave it at that. So,  
15 thank you, Mr. Bello.

16 BZA CHAIR HILL: All right. Thank you Chairman  
17 Hood. Anyone else?

18 (No audible response.)

19 BZA CHAIR HILL: All right. Mr. Bello, do you  
20 have anything else to add at the end?

21 MR. BELLO: Nothing more to add, sir.

22 BZA CHAIR HILL: Okay. Thank you. All right.  
23 I'm going to go ahead and close the hearing on the record.  
24 Mr. Young, if you'll please excuse everyone.

25 Okay. I am going to ask Vice Chair John to help

1 begin the discussion and articulation. Articulation? Of  
2 this particular case.

3 Vice Chair John?

4 VICE CHAIRPERSON JOHN: Thank you Mr. Chairman.  
5 I'll start the discussion. So, first off, I'm going to give  
6 great weight to OP's analysis as to whether or not there's  
7 an exceptional condition.

8 But the issue for me is that the Applicant is  
9 saying two things that can't be reconciled. The Applicant  
10 is saying, yes, there's these three underlying lots that  
11 created an exceptional condition that require us to subdivide  
12 and create a nonconforming lot.

13 It just is not -- it's not rational. The  
14 Applicant is also saying -- I mean, it would be different if  
15 the Applicant came in and said, there are these three  
16 underlying lots that are nonconforming and we would like to  
17 re-subdivide to the original formation with that one lot that  
18 is, can arguably be separated.

19 But, it still would not be the exact dimension of  
20 the original lot, because there is the -- this little piece  
21 at the end.

22 So, the Applicant is also misinterpreting what  
23 Section 302.1 says. I believe that's the section. Which is  
24 really -- the prohibition is against any lot being subdivided  
25 to create a nonconforming lot. And this is exactly what the

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1 application -- Applicant is doing.

2           So, I appreciate all of the history that the  
3 Applicant has given us on the A&T lots. And it was really  
4 very interesting to hear.

5           And I agree that they're -- that this lot is  
6 different. But, it doesn't create an exceptional condition,  
7 because there is an existing building on the property.

8           And so, the Applicant has use of that building.  
9 And there is a violation of 202.1. So, that's -- that's my  
10 take on it.

11           And I would like to hear what the others have to  
12 say. I would also say that the ANC is in opposition. And  
13 we've had testimony from residents who are not adjacent  
14 neighbors as to the potential harm from the -- from the  
15 development.

16           I believe DDOT is in support of the Application.  
17 But, I just would like to confirm -- no, DDOT has no  
18 objection.

19           So, thank you Mr. Chairman. And I would not  
20 support the application.

21           BZA CHAIR HILL: And so thank you, Vice Chair  
22 John. That was extremely helpful. And so Mr. Smith?

23           MEMBER SMITH: Yes, that was extremely helpful.  
24 Yes, I'll just say a point that I want to make, the Applicant  
25 has not sufficiently demonstrated that they need a variance

1 -- the variance prongs for us to evaluate.

2 I do not believe based on what they said, or  
3 presented, that there is an extraordinary or exceptional  
4 situation or condition on this specific piece of property.

5 The property yes, maybe you know, there were  
6 underlying tax lots that were platted. But, in combination,  
7 we've historically, or the Office of Zoning has historically  
8 pushed in this way.

9 In their combination, they do propose a conforming  
10 lot. So, and to take it a step further, exactly what Ms.  
11 John is saying, I do believe that based on the presentation  
12 that we've heard today, I think is a misinterpretation of  
13 302.1.

14 302.1 as Ms. John stated, the purpose of that is  
15 to prevent the creation of nonconforming lots. And where we  
16 are attempting -- what the Applicant is attempting to do, is  
17 to conflate -- create a nonconforming lot to easement where  
18 the existing house would be located.

19 Which would be conforming to the side yard  
20 setbacks. To the point they're asking for a special  
21 exception for relief from a nonconforming of their own  
22 making.

23 So, that's one for me. I don't believe -- going  
24 back to the variance standards, I don't believe that the  
25 application -- well, I believe that -- let me back up.

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1           The strict application of the regulations would  
2 result in a peculiar and exceptional difficulties to the  
3 owner of the property. I don't believe that they have  
4 presented a sufficient argument for me to believe that it  
5 would pass that bar.

6           The arguments that I heard, other than what we  
7 heard today, last time we heard this, this case is more of  
8 an economic argument than anything about any practical  
9 difficulty that needed to use the property.

10           The property owner can continue to use the  
11 property. They may not be able to subdivide it all. But  
12 they can expand the existing detached single family dwelling  
13 in a manner that is in keeping with the zoning regulations.

14           So, I don't believe that they have passed those  
15 two prongs of the variance criteria. And relief can be  
16 granted without extension into the public good.

17           I believe that this proposed variance would create  
18 non-conformities in association with the existing -- with the  
19 original parcel with the existing single family home, would  
20 remain.

21           So, I do not believe this is within the public  
22 good to create those nonconforming units and then attempt to  
23 get special exception to correct their -- the nonconformity  
24 of their own making.

25           And lastly, with the proposed units, substantially

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1 with their intent and purpose of the integrity of the zoning  
2 plan, is in violation of the zoning regulations on that.

3 I do believe that the creation of two substandard  
4 lots that do not meet the minimum lot width requirements of  
5 the R-1-B zone, would be a detriment to the zoning within  
6 this particular area.

7 So, with that, I'll get off my soapbox, I guess.  
8 And I do not recommend approval.

9 BZA CHAIR HILL: All right Mr. Smith. Again, that  
10 was very helpful. Mr. Blake?

11 MEMBER BLAKE: Yeah. I would agree with the  
12 comments made by Board Member Smith when he replied to the  
13 variance request.

14 I definitely do not see how the first and variance  
15 issue are met. And I -- I will rely on the interpretation  
16 of 302.1 to Ms. John, as I am not familiar with that.

17 But, the lot is there and it would apply, it seems  
18 germane. I would also note that they had more than 31 people  
19 opposed to this, and one -- only one in support. And the ANC  
20 is opposed to it as well.

21 I would be in a position to also deny the  
22 requested relief.

23 BZA CHAIR HILL: Thank you. Chairman Hood?

24 ZC CHAIR HOOD: I would agree with everything I  
25 heard. Especially from Vice Chair John and others about

1 302.1.

2           The only nexus for me was the issue about the  
3 Corporation Counsel letter. Which I still don't see anything  
4 in the record that that was sup -- I have a lot of respect  
5 for Mr. Bello, because he used it. In another life, he did  
6 this, a lot of this exactly.

7           But, I just don't understand the nexus. And I  
8 don't understand how the Corporation Counsel letter is  
9 binding. Or how it supersedes what we have to look at it,  
10 especially under 302.1.

11           So, I associate myself with my other colleagues.  
12 And again, I don't see anything in the record that  
13 counteracts what he said about the Corporation Counsel.

14           I have a lot of respect for him. That's why I  
15 wanted to make sure I gave him differential to that issue.  
16 But, I don't see it. And I don't think it's warranted on the  
17 merits in this record.

18           So, I'll be voting to deny as well. Thank you Mr.  
19 Chairman.

20           BZA CHAIR HILL: Okay. Thank you Chairman Hood.  
21 I have nothing additional to add. I thank all of the  
22 comments from my follow colleagues.

23           I'm going to make a motion to deny Application  
24 Number 20389 as captioned and read by the Secretary, and ask  
25 for a second. Ms. John?

1 VICE CHAIRPERSON JOHN: Second.

2 BZA CHAIR HILL: The motion has been made and  
3 seconded. If you could take a roll call vote, Mr. Moy?

4 MR. MOY: Thank you Mr. Chairman. When I call  
5 each of your names, if you would please respond with a yes,  
6 no, or abstain to the motion made by Chairman Hill to deny  
7 the application for the reas -- for the relief that's being  
8 requested. The motion to deny was seconded by Vice Chair  
9 John.

10 Zoning Commission Chair Anthony Hood?

11 ZC CHAIR HOOD: Yes to deny.

12 MR. MOY: Mr. Smith?

13 MEMBER SMITH: Yes.

14 MR. MOY: Mr. Blake?

15 (No audible response.)

16 MR. MOY: Mr. Blake?

17 MEMBER BLAKE: Yes to deny.

18 MR. MOY: Sorry. Vice Chair John?

19 VICE CHAIRPERSON JOHN: Yes to deny.

20 MR. MOY: Chairman Hill?

21 BZA CHAIR HILL: Yes to deny.

22 MR. MOY: Staff would record the vote as five to  
23 zero to zero and this on the motion made by Chairman Hill to  
24 deny the application. The motion to deny was seconded by  
25 Vice Chair John.

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1           Also in support of the motion to deny is Zoning  
2 Commission Chair Anthony Hood, Mr. Smith, Mr. Blake, Vice  
3 Chair John, and Chairman Hill. The motion carries, Mr.  
4 Chairman to deny on a vote of five to zero to zero.

5           BZA CHAIR HILL: Okay. Thank you Mr. Moy. You  
6 guys, I hate to do this, could I take a -- first of all,  
7 Chairman Hood, thank you so much for being here.

8           ZC CHAIR HOOD: Absolutely. Okay BZA you all have  
9 a great day.

10          BZA CHAIR HILL: You have a good day Chairman.  
11 And then if we could just take five minutes. I just -- a  
12 just quick five minutes. Thank you.

13          (Whereupon, the above-entitled matter went off the  
14 record at 3:54 p.m. and resumed at 4:00 p.m.)

15          BZA CHAIR HILL: Mr. Moy, we're all back if you  
16 could go ahead and call us in and call us into our next case,  
17 please.

18          MR. MOY: Thank you, Mr. Chairman. The Board is  
19 back in its hearing session after a very, very, very brief  
20 recess. And the time is at or about 4:01 p.m.

21          The next case before the Board is Application  
22 Number 20526 of 4248, LLC. This application, as amended,  
23 caption advertised for a special exception from the side yard  
24 requirements, Subtitle D, Section 206.3, which would  
25 construct a new three-story, semi-detached principal dwelling

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1 unit in the R-2 zone. The property is located 1227 47th  
2 Place Northeast, Square 5160, Lot 39.

3 As a preliminary, Mr. Chairman, there are three  
4 documents that the applicant tried to file into the record,  
5 which was within our 24-hour block. It's the Affidavit of  
6 Posting, a revised statement, a revised application statement  
7 and the applicant's PowerPoint.

8 BZA CHAIR HILL: Okay. Mr. Bello, could you  
9 introduce yourself for the record, please?

10 MR. BELLO: Good afternoon, Mr. Chair. Toye  
11 Bello, 1917 Benning Road representing the applicant.

12 BZA CHAIR HILL: Thank you, Mr. Bello. Unless the  
13 Board has any issues, I'd like to see the items that the  
14 applicant was trying to get into the record, including the  
15 PowerPoint. And if you have any issues, please raise your  
16 hand. All right. If the staff could please go ahead and  
17 drop that into the record so that we can take a look at it.

18 Mr. Bello, who is here with you?

19 MR. BELLO: I believe I'm here by myself.

20 BZA CHAIR HILL: Is there a Ryan Nicholas?

21 MR. BELLO: I'm not sure who that is.

22 BZA CHAIR HILL: Mr. Nicholas --

23 PARTICIPANT: That's our new lawyer.

24 BZA CHAIR HILL: Sorry. There's new people and  
25 so sorry, Mr. Nicholas. All right. Okay. All right. Let

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1 me just see here if I can get this. All right, Mr. Bello.  
2 If you could go ahead and walk us through your application  
3 as to why you believe your client is meeting the criteria for  
4 us to grant the relief in question. I'm going to put 15  
5 minutes on the clock just so I know where we are. And you  
6 can begin whenever you like.

7 MR. BELLO: Mr. Paul, if you would please reveal  
8 the PowerPoint if possible. Thank you.

9 Next slide, please. So the application before the  
10 Board is for a special exception from the minimum side yard  
11 requirements. The property is located in the R-2 zone  
12 district. And it's a vacant lot. And the owner seeks to  
13 build a single family semi-detached structure on it.

14 The site is just a little over 20 feet wide. So  
15 what is proposed is a little over 17 feet wide width building  
16 that would be constructed. And that's why we need the relief  
17 from the side yard.

18 Next page, please. So the compliance with the  
19 general standards, the application will be in harmony with  
20 the general purpose and intents of the zoning regulations.  
21 The general neighborhood is capsulized by an eclectic mix of  
22 single family detached, semi-detached dwellings, apartment  
23 houses and place of worship uses.

24 The proposed use of a single family semi-detached  
25 dwelling is consistent and compatible with the general

1 purpose of the residential R-2 zone as set forth under  
2 Subtitle D, Section 1001.1.

3           The general provisions of Subtitle D, 1001.1,  
4 states that R-2 zone districts are designated for stable, low  
5 to moderate density residential areas. It's suitable for  
6 family life and supporting services. The proposed use is a  
7 single family semi-detached dwelling and is therefore a low  
8 density use.

9           Next slide, please. It will not change or affect  
10 adversely the use of neighboring properties in accordance  
11 with the intent and purpose of the zoning regulations.

12           The subject property is flanked on the north by  
13 accessory apartment spaces to a place of worship where it  
14 proposed a lot line without any fenestration and sets back  
15 3.94 feet from an adjacent non-conforming apartment house use  
16 with at-risk windows on the common division lot line  
17 notwithstanding that the windows on the adjacent houses are  
18 at-risk.

19           Applicant has considerately located the lot line  
20 wall opposite the location of the at-risk windows but also  
21 purposefully located openings of windows such that the  
22 privacy of the user of the residents of the apartment are not  
23 adversely affected.

24           Next slide, please. We will meet such conditions.  
25 Those conditions are set forth in Sections 5201.4 through

1 5201.7.

2           Next slide, please. The light and air available  
3 to neighbor-owned properties shall not be duly affected.  
4 Applicant has purposefully located the proposed lot line wall  
5 opposite the at-risk windows, on the lot line wall of the  
6 non-conforming apartment house in protection of the light and  
7 air available to the adjacent property.

8           The subject property is adjacent to apartment  
9 spaces, accessory to a place of worship on the southern flank  
10 hence the light and air available to neighboring properties  
11 are not unduly affected.

12           Next slide, please. B, the privacy of use and  
13 enjoyment of neighborhood properties shall not be unduly  
14 compromised. The neighboring properties are a mix of single  
15 family detached, semi-detached and church uses.

16           Adjacent to the subject property on the south and  
17 north are more intensive uses of a place of assembly or  
18 worship and a non-conforming apartment house.

19           A place of worship is not a permanent residence  
20 and is used periodically. The proposed outline wall is  
21 devoid of any fenestration. Hence, it has a zero impact on  
22 the privacy of the use of the church.

23           As aforementioned, the proposed fenestration on  
24 the south wall of the proposed building is setback 3.9 feet  
25 from the at-risk windows of the apartment building. They

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1 have been placed purposely for foreclose direct eye line  
2 sight into the windows on the adjoining property building,  
3 apartment building.

4           Applicant notes further that the at-risk windows  
5 of the apartment house predominantly opens into the stairwell  
6 and not the living and sleeping rooms of the apartment hence  
7 privacy of use is not unduly compromised.

8           Next slide, please. C, the proposed addition or  
9 accessory structure together with original building or the  
10 new principal building as viewed from the street, alley or  
11 other public way shall not substantially visually intrude  
12 upon the character, scale and personal houses along the  
13 street or alley frontage.

14           The proposed building was designed to purposefully  
15 fit into the eclectic architecture of the neighborhood and  
16 street of location. And applicant has incorporated design  
17 recommendations suggested by OP.

18           The proposed type of structure to use in  
19 architectural design is compatible with the prevailing brick  
20 two to three-story structures on the street or location.

21           Next slide, please. Applicant believes that the  
22 submissions, including photographs, provide this context.

23           Next slide, please. These are elevations and the  
24 rendering of the proposed building with the brick work-in  
25 changes as the Office of Planning recommended.

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1           Next slide, please. The photograph to your left  
2 is of the vacant building. And there's a sliver that serves  
3 the church building to the left. The apartment building is  
4 to the right. And the next picture shows the building  
5 directly across from the lot.

6           Next slide, please. All the pictures of all the  
7 types of uses on the same street.

8           Next slide, please. Applicant submits the  
9 application has met the burden of proof for granting a  
10 special exception and respectfully requests that the Board  
11 grant the approval except for the relief, the subject  
12 property is constrained to request as a result of narrowness  
13 of lot width, a condition which predates the adoption of ZR  
14 58. The proposed project complies with all of the applicable  
15 development standards in assumed district of location.

16           The proposed project is the type of structure use  
17 permitted in its under reliance on district location. The  
18 application complies with the general provisions of  
19 Subsection D, 1001.1 and 2.

20           And that would conclude my presentation. I would  
21 just add that we haven't had the opportunity to present  
22 before the ANC. So what I would hope is that perhaps the  
23 Board could leave the record open for us to complete that  
24 this month.

25           BZA CHAIR HILL: Okay, Mr. Bello, just a couple

1 things. How come you guys didn't get before the ANC yet?

2 MR. BELLO: I think I will take responsibility for  
3 that. Because I think there's a process that this ANC  
4 prefers and that is first to present to civic association.  
5 And we missed that deadline in October.

6 BZA CHAIR HILL: Okay. And I'm a little confused.  
7 Are there two lots there?

8 MR. BELLO: There is only one single lot. But  
9 there are two sliver of lots adjacent to the church that  
10 makes the lot look larger, but they don't belong to the  
11 applicant.

12 BZA CHAIR HILL: So there's another lot. If  
13 you're facing the building, there's another lot to the left?

14 MR. BELLO: There are two sliver of attached lots,  
15 yes.

16 BZA CHAIR HILL: So another one of these can be  
17 built right there?

18 MR. BELLO: I'm sorry, sir?

19 BZA CHAIR HILL: The two lots --

20 MR. BELLO: Those lots belong to the church.

21 BZA CHAIR HILL: Okay. Okay. All right. Does  
22 the Board have any questions of the applicant? Commissioner  
23 Shapiro?

24 COMMISSIONER SHAPIRO: Yes. I'm just curious  
25 about the lack of ANC report and lack of communication with

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1 the ANC. And, I mean, it's a little unusual for us to -- you  
2 know, I'm wondering -- I'm really wondering why we're even  
3 hearing this if it hasn't been before the ANC. And do you  
4 know when the next ANC meeting is? And have you had any  
5 communication with them?

6 MR. BELLO: Yes. I sent the -- I sent an email --  
7 there actually was communication. I just couldn't get on the  
8 schedule of the civic association. So I think that the --  
9 I sent the commissioner an email to get on their agenda this  
10 month so I think November 27 will be when the ANC meets.

11 BZA CHAIR HILL: Okay. May I have a motion --  
12 I'm sorry. Go ahead, Commissioner Shapiro.

13 COMMISSIONER SHAPIRO: That's it, Mr. Chair.

14 BZA CHAIR HILL: All right. I don't know what  
15 we're going to do. Anybody else? Okay. Because it is a  
16 little bit out of order. Okay. I'm going to turn to the  
17 Office of Planning.

18 MS. ELLIOTT: Hello. Good afternoon, Mr. Chair,  
19 members of the Board. I'm Brandice Elliott representing the  
20 Office of Planning.

21 The Office of Planning did file a report to the  
22 record analyzing the requested side yard relief. It gets the  
23 special exception criteria with D 5201 and also the general  
24 special exception criteria of Subtitle X, Chapter 9.

25 And we did find that the proposed reduced side

1 yard would not have an undue impact to light, air, privacy  
2 or neighborhood character.

3 We are happy to see that the applicant has  
4 incorporated some of our design suggestions into the  
5 building. And that actually helps it be a little more  
6 compatible with some of the adjacent buildings.

7 I'm happy to answer any questions.

8 BZA CHAIR HILL: Okay. Ms. Elliott, maybe I'm  
9 just also tired today. And Mr. Bello, I'm looking at one of  
10 your -- I'm in Exhibit 75A-3 and it shows the existing church  
11 then vacant Lot 2 and then proposed three-story dwelling.

12 So I'm asking the Office of Planning, is there one  
13 vacant lot that the church is on and that's -- or are there  
14 are two lots there? I'm just trying to understand if there's  
15 like some small little lot next to the proposed dwelling.

16 MS. ELLIOTT: So I think there are two separate  
17 small slivers that are lots. There are two separate lots.  
18 And I think there would have to be perhaps a new subdivision  
19 for that to be buildable. It also may potentially need some  
20 relief, but they're not related to this lot. They stand  
21 alone. Does that help?

22 BZA CHAIR HILL: Yes, it does. It does. It does.  
23 Okay. Does anybody have any questions for the Office of  
24 Planning? Okay. Mr. Young, is there anyone here wishing to  
25 speak?

1 MR. YOUNG: There are not.

2 BZA CHAIR HILL: Okay. So we're back here real  
3 quick for this ANC thing. I don't know what to do. Like,  
4 what we could do, and Commissioner Shapiro, I'll give you a  
5 thing for a second. Maybe we could, like, do a continued  
6 hearing, right, so that we can hear from the ANC after  
7 they've gone to the ANC? Because I'm not comfortable doing  
8 this without at least the ANC having been proposed to or  
9 notified or something going on. Commissioner Shapiro?

10 COMMISSIONER SHAPIRO: Yes, I agree with that.  
11 Also there were some notes that we had related to  
12 discrepancies in the documents that we have wherein the side  
13 yard relief, the self certs say it's at 2.94 feet. Your  
14 statement, Mr. Bello, says 3.94 feet. The OP report has 3.92  
15 feet, which is why I want to maybe take a quick second to  
16 clarify. It's not a big deal, but while we're here clarify  
17 that.

18 MR. BELLO: Just one second, please.

19 COMMISSIONER SHAPIRO: And to your other point,  
20 Mr. Chair. I agree. I think perhaps a continued hearing.  
21 This feels like a -- I don't really have any concerns about  
22 this case, and I don't feel comfortable acting without  
23 hearing from the ANC, at least the opportunity for the ANC  
24 to respond.

25 BZA CHAIR HILL: I'm going to wait for Mr. Bello

1 to clarify the number.

2 COMMISSIONER SHAPIRO: If I may, Mr. Chair, it's  
3 going to take Mr. Bello a bit. If we're continuing the  
4 hearing anyhow, maybe we'll just have this clarified when  
5 next we hear from him.

6 MR. BELLO: So the lot is 20 feet .94 wide. And  
7 what is proposed is a 17 foot width of structure. So the  
8 side yard is 3.94.

9 COMMISSIONER SHAPIRO: The plan said 3.11.

10 BZA CHAIR HILL: Okay. Mr. Bello, I'll tell you  
11 what. We are going to come back anyway to hear from -- after  
12 you've heard from the ANC. We've basically gone through the  
13 hearing. If you can clarify that number that Commissioner  
14 Shapiro was asking about by the time we get back here, Mr.  
15 Moy, when will you be able to go to the ANC, Mr. Bello, and  
16 come back to us with something?

17 MR. BELLO: We intend to complete the ANC process  
18 this month. I would say by the end of the month.

19 BZA CHAIR HILL: Okay. So it is funny, like, I  
20 don't know, and I guess I'm kind of speaking to my fellow  
21 Board members, like, we -- the fact that the applicant hasn't  
22 presented yet to the ANC is, I guess, really kind of the crux  
23 of this, right? Meaning that we get information -- we get  
24 information -- we sometimes don't get information from the  
25 ANC, right? And so I guess I'm kind of having a bigger

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1 discussion that we can talk about later as to whether or not  
2 applicants get to us unless they've at least gotten something  
3 that they've been to the ANC or somehow been to the ANC.

4 But back to this scheduling issue, Mr. Moy, if Mr.  
5 Bello is able to get to the ANC and get back before us, I  
6 know that we're basically jammed up completely all of the  
7 time from now until, you know, February, right? Like, when  
8 can we get back here in December, I guess? You're saying,  
9 Mr. Bello, you're going to present hopefully this month,  
10 correct?

11 MR. BELLO: That's correct.

12 BZA CHAIR HILL: And so then by the middle of  
13 December, you should have something to tell us, is that  
14 correct?

15 MR. BELLO: That's correct, sir.

16 BZA CHAIR HILL: Okay. Is there any kind of a  
17 date, Mr. Moy, in December?

18 MR. MOY: Yes, sir. I would recommend or suggest  
19 that we could slide this case on a continued hearing on  
20 December 15.

21 BZA CHAIR HILL: Okay. How many are on there now,  
22 Mr. Moy?

23 MR. MOY: Eight cases.

24 BZA CHAIR HILL: Okay. And no appeals?

25 MR. MOY: Just a second. No appeals.

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1 BZA CHAIR HILL: Okay. All right. Okay. Mr.  
2 Bello, we'll come back for a continued hearing on 12/15.  
3 Okay?

4 MR. BELLO: Thank you kindly.

5 BZA CHAIR HILL: And then please just let us --  
6 you know, it'll be a continued hearing just to hear back of  
7 any questions the Board has and also what happened at the  
8 ANC.

9 MR. BELLO: Yes, sir.

10 BZA CHAIR HILL: Okay. Then I'm going to --  
11 unless other Board members have any questions, I'll go ahead  
12 and close the hearing on the record and see you back here,  
13 Mr. Bello, on December 15.

14 MR. BELLO: Thank you, Mr. Chairman.

15 MR. MOY: Mr. Chairman?

16 BZA CHAIR HILL: Yes, sir.

17 MR. MOY: I think we're not closing the hearing  
18 on the record yet. Is that correct?

19 BZA CHAIR HILL: Sorry. You're correct. Just  
20 closing the hearing on the record except for a continued  
21 hearing for the information from the ANC for December 15.  
22 Okay. Thank you, Mr. Bello. Mr. Moy, you can call our next  
23 case when you get a chance.

24 MR. MOY: The next case before the Board is  
25 Application Number 20556, Jan Brandes and Brent Soper, S-O-P-

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1 E-R. This application captioned, advertised and amended for  
2 special exception from the rear yard requirements, Subtitle  
3 D, Section 306.1, and lot occupancy requirements, Subtitle  
4 D, Section 304.1.

5 This would construct a rear one-story addition and  
6 a second story deck to an existing attached three-story with  
7 basement principal dwelling unit in an R-3 zone. The  
8 property is located at 2110 Bancroft Place Northwest, Square  
9 2532, Lot 53.

10 The only other item I would like to show you, Mr.  
11 Chairman, is because of the 24-hour window block, there was  
12 a filing of a letter in support and a letter in opposition.  
13 So that's before you, Mr. Chairman.

14 BZA CHAIR HILL: Okay. Mr. Brigham, can you hear  
15 me?

16 MR. BRIGHAM: Yes, sir. I can.

17 BZA CHAIR HILL: Can you introduce yourself for  
18 the record, please?

19 MR. BRIGHAM: Yes. My name is Henry Brigham. And  
20 I will be representing the client for 2110 Bancroft Place  
21 Northwest.

22 BZA CHAIR HILL: Okay. Great. Mr. Moy, if you  
23 can, unless anybody has any issues, if you could go ahead and  
24 let those two items into the record, Mr. Moy?

25 MR. MOY: Yes, sir.

1 BZA CHAIR HILL: Can you ask staff to upload them?

2 MR. MOY: Yes, sir. I will do that. And I will  
3 also add that today ANC 2D did file a letter of support into  
4 the record. So that's in your case record now, sir.

5 BZA CHAIR HILL: Got it. Thank you. I see it.  
6 Okay. I always love this ANC. There's only two people, two  
7 representatives. It's got to be -- it's all or no. Okay.

8 Mr. Brigham, if you could go ahead and walk us  
9 through your applicant's -- I'm sorry, your client's  
10 application as to why you believe that we should grant the  
11 requested relief. You have 15 minutes on the clock just so  
12 I know where we are. And you can begin whenever you like.

13 MR. BRIGHAM: I appreciate the time. And thank  
14 you, Mr. Chair.

15 BZA CHAIR HILL: Yes, Mr. Brigham, by the way, I  
16 don't know if you can turn your microphone up a little bit  
17 maybe. I can't hear you that well.

18 MR. BRIGHAM: Let me give it a little test here.  
19 Sorry. Just a second. How is this?

20 BZA CHAIR HILL: Yes. Not really. But we'll just  
21 listen very carefully.

22 MR. BRIGHAM: Okay. Okay. So my client is  
23 seeking occupancy relief from 60 percent to 69 percent lot  
24 occupancy along with a rear yard setback from -- that  
25 actually (telephonic interference) --

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1 BZA CHAIR HILL: Hey, Mr. Brigham? Mr. Brigham?  
2 I'm sorry. I can't hear you at all. I mean, you're really  
3 breaking up. Maybe you can, like, either turn off the video  
4 or just call in.

5 MR. BRIGHAM: Okay. Just a second. Mr. Chair,  
6 is this any better?

7 BZA CHAIR HILL: Yes. Why don't you just call in?  
8 Do you see the number there? It's on the screen, 202-727-  
9 5471 and mute your computer microphone and then just call in  
10 on the phone.

11 (Pause.)

12 BZA CHAIR HILL: Mr. Brigham, can you hear me?

13 MR. BRIGHAM: Yes, sorry. The number on the --

14 BZA CHAIR HILL: Actually, Mr. Brigham, you sound  
15 a little better right now.

16 MR. BRIGHAM: Okay.

17 BZA CHAIR HILL: Why don't you try again?

18 MR. BRIGHAM: Okay. So I am representing the  
19 clients concerning Bancroft Place. We are searching for a  
20 relief or seeking relief for setback of lot occupancy.  
21 Currently --

22 BZA CHAIR HILL: All right. Never mind, Mr.  
23 Brigham, never mind. So why don't you do this? Listen to  
24 me, listen to me a second. I'm going to move on to the next  
25 one. Okay? You call that number. Okay? And just try to

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1 get a line on there. Okay?

2 MR. BRIGHAM: Okay.

3 BZA CHAIR HILL: All right. Mr. Moy, Mr. Young,  
4 if you could please remove everyone from this hearing. Mr.  
5 Moy, if you can queue up the next one.

6 MR. MOY: Okay. Let's see. Okay. Good. So this  
7 case then would be Application Number 20577 of Tristan  
8 Wilkerson. This is advertised and captioned for relief for  
9 special exception from the minimum side yard requirements,  
10 Subtitle D, Section 206.4, in the area variance from the lot  
11 occupancy requirements, Subtitle D, Section 304.1. And this  
12 would construct a two-story side addition to an existing  
13 semi-detached, three-story with basement principal dwelling  
14 unit in the R-3 zone. The property is located at 5332  
15 Illinois Avenue Northwest, Square 2997, Lot 111, and that's  
16 all I have.

17 BZA CHAIR HILL: Okay. Great. Mr. Cohen, can  
18 you hear me?

19 MR. COHEN: Yes, sir. Can you hear me?

20 BZA CHAIR HILL: Yes. Could you introduce  
21 yourself for the record, please?

22 MR. COHEN: Excellent. Thank you, Chairman Hill.  
23 On behalf of the --

24 BZA CHAIR HILL: Yes, we can.

25 MR. COHEN: -- applicant, my name is Christopher

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1 Cohen, land use counsel with Holland & Knight.

2 BZA CHAIR HILL: Sure. Commissioner Shapiro?

3 COMMISSIONER SHAPIRO: Is there a waiver request  
4 for some files?

5 MR. COHEN: Yes, Commissioner, there is. I was  
6 going to get to that with the preliminary matters but  
7 obviously deferring to the Board to lead us --

8 (Simultaneous speaking.)

9 BZA CHAIR HILL: Mr. Cohen, what's the waiver?

10 MR. COHEN: The applicant is requesting a waiver  
11 in connection with its Exhibit 38. We offered a supplemental  
12 statement late last week to provide the Board with a little  
13 bit more information on the existing conditions, the side  
14 yard that's being implicated by the relief as well as we  
15 submitted the official minutes from the ANC 4D meeting that  
16 the applicant attended back in September.

17 BZA CHAIR HILL: Okay. Unless the Board has any  
18 issues, I'll go ahead and allow that into the record. Okay.  
19 Thanks, Commissioner Shapiro.

20 All right. Mr. Cohen, if you want to go ahead and  
21 walk us through your presentation as to why you believe your  
22 client should be granted the relief requested, and you can  
23 begin whenever you like. I've got 15 minutes on the clock  
24 just so I know where we are.

25 MR. COHEN: Okay. Thank you, Chairman Hill,

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1 again, and thank you to all of the members of the Board.  
2 Real quickly just some other preliminary matters.

3 Applicant has complied with public notice  
4 requirements. Exhibit 34 is the Affidavit of Posting. The  
5 minutes are Exhibit 37.

6 Along with us today is Mr. Shane Dettman of  
7 Holland & Knight as an expert witness. He'll be available  
8 for questions as well as the architect, Mr. Bernardo Ramos.  
9 I believe he's called in on the phone, and he's just  
10 available for questions.

11 And lastly, we'll get going if, Mr. Young, you  
12 could pull up our PowerPoint presentation. That's Exhibit  
13 39 in the record. Thank you so much.

14 So this application actually stems from a referral  
15 from the zoning administrator for a special exception relief  
16 from the side yard requirements applicable to the R-3 zone  
17 as well as an area variance request from the lot occupancy  
18 requirements applicable to the R-3 zone.

19 This relief would allow for a small approximately  
20 220 square foot addition to the existing semi-detached  
21 dwelling.

22 If you could please go to the next slide? Just to  
23 orient the Board with the location of the site, as you can  
24 see here it's located at the southwest corner of the  
25 intersection of Jefferson Street and Illinois Avenue zoned

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1 R-3. And you can particularly see in the photo to the right  
2 the irregular configuration of this lot as compared to the  
3 other lots or from the square.

4 It is also of smaller size and this is -- I'm  
5 raising this now as this is connected to the exceptional  
6 conditions on the property. This is also detailed in the  
7 applicant's Pre-Hearing Statement. I believe it was Exhibit  
8 A. We highlighted the subdivision history of this particular  
9 square.

10 Next slide, please. And, again, just the  
11 application overview. The special exception would allow a  
12 proposed three foot side yard, and the area variance would  
13 allow the proposed 73 percent lot occupancy.

14 It's important to note, and I should flag here,  
15 that the side yard and the lot occupancy are existing non-  
16 conformities. However, to allow the addition as proposed  
17 because the proposed side yard is less than 5 feet in  
18 accordance with Subtitle D, Section 206.7, we require special  
19 exception relief. And because the lot occupancy actually  
20 exceeds the 70 percent that's permitted by special exception  
21 of the R-3 zone, we are seeking an area variance.

22 Quickly running through the support, the Office  
23 of Planning has submitted a report recommending approval  
24 absent any conditions. DDOT also has stated that they have  
25 no objections. And as I indicated earlier, the applicant met



1 with ANC 4D back on September 22, and we were pleased to  
2 receive their unanimous vote of support.

3           Although they did not file an official report, we  
4 have offered their minutes that were approved for the  
5 September meeting at the October meeting. So those are there  
6 for the Board's consideration. And then we have also  
7 submitted five letters of support from surrounding neighbors.  
8 Those are available at Exhibits 27 through 31 of the record.

9           BZA CHAIR HILL: Hey, Mr. Cohen?

10           MR. COHEN: Yes.

11           BZA CHAIR HILL: You didn't get an actual report,  
12 right, from the ANC?

13           MR. COHEN: No, sir. The ANC has not submitted  
14 a report, which is why we offer the official minutes from  
15 that meeting.

16           BZA CHAIR HILL: Okay. Go ahead, Mr. Cohen.  
17 Sorry.

18           MR. COHEN: No, that's okay. Thank you. I'm  
19 going to turn it now to the applicant, Mr. Tristan Wilkerson.  
20 He's going to walk through the purpose of the addition and  
21 the existing conditions of the property if you could just go  
22 to the next slide to tee him up. Thank you.

23           MR. WILKERSON: Thank you, Chris. Apologies in  
24 advance if my audio goes out. I'm having some difficulty  
25 with the platform.

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1 BZA CHAIR HILL: We can hear you right now, Mr.  
2 Wilkerson. Could you introduce yourself for the record?

3 MR. WILKERSON: Yes. My name is Tristan  
4 Wilkerson. I'm the owner of 5332 Illinois Avenue Northwest.

5 BZA CHAIR HILL: Okay. Great. Go ahead please,  
6 sir.

7 MR. WILKERSON: So what you see here in the first  
8 picture is the home as it currently exists and then in the  
9 second photo, the area in question, which is the sort of side  
10 yard and rear yard.

11 There isn't actually much of a rear yard. It's  
12 a small cutout that -- I don't know what maybe used to exist,  
13 but it's not usable space.

14 BZA CHAIR HILL: Yes, Mr. Wilkerson, we lost you.  
15 Mr. Cohen?

16 MR. COHEN: Yes, sir.

17 BZA CHAIR HILL: Do you want to just walk us  
18 through the slides here? I mean, I think it's pretty self-  
19 explanatory.

20 MR. COHEN: That's fine. I'm happy to do that.  
21 And Tristan, if you get back on, you can feel free to talk  
22 over me.

23 As Mr. Wilkerson was saying, what you're looking  
24 at is the existing conditions of the home.

25 MR. WILKERSON: On the third floor --

1 MR. COHEN: Oh, go ahead.

2 MR. WILKERSON: On the top floor of the home, the  
3 bedroom isn't actually large enough --

4 BZA CHAIR HILL: Mr. Wilkerson?

5 MR. WILKERSON: Yes?

6 BZA CHAIR HILL: I'm sorry. We missed everything  
7 you just said. So can you hear me?

8 MR. WILKERSON: I can hear you now. I'm going to  
9 try to log on a different device.

10 BZA CHAIR HILL: Mr. Wilkerson, just give me a  
11 second. Let Mr. Cohen just kind of walk us through these  
12 next few slides and then if we have any questions for you,  
13 we'll come back to you. All right? Mr. Cohen, can you go  
14 ahead?

15 MR. COHEN: Yes. That's fine. Thank you,  
16 Chairman Hill.

17 So we can move on to the next slide. These are  
18 the existing conditions. The applicant is proposing a small  
19 addition in that side yard you just saw on the right photo.  
20 The addition would comprise a total of approximately 224  
21 square feet.

22 What it would do is it would enclose that side  
23 yard porch and allow for additional bedroom space in the  
24 master bedroom on the second floor. It would not expand the  
25 footprint at the ground level of the existing structure.

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1 Again, the reason why the relief is needed is that the lot  
2 occupancy is being expanded on the second floor and the side  
3 yard is below or does not comply with the 5 foot side yard  
4 minimum applicable to the R-3 zone.

5 Next slide, please. So that's the first floor.  
6 This is the second floor. And this particular note noting  
7 that when you do the math only approximately 35 square feet  
8 in this case triggers the need for variance relief.

9 For reasons related to visual alignment and  
10 structural needs just ostensibly to align the side wall with  
11 the first floor, it would be difficult to concede that 35  
12 square feet. I know we had discussions with the OP about  
13 that. But this is to highlight the de minimis nature of this  
14 proposed addition.

15 If we could move to the next slide, please? So  
16 starting with the side yard, in the R-3 zone pursuant to  
17 Subtitle D, Section 5201.1, the homeowner in this case, when  
18 making an addition or proposing an addition, can seek relief  
19 from the side yard requirements. The official language from  
20 the zoning regulations is here for the Board's consideration.

21 Next slide, please. Thank you. And these are the  
22 applicable criteria. As you saw, and we did not quite point  
23 this out beforehand, the abutting neighbor to the south,  
24 there are no at-risk windows in that wall or along that wall  
25 I should say, that would be directly implicated by the

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1 proposed addition.

2           So the light and air of the neighboring properties  
3 really would not be impacted as well as the privacy and use.  
4 And, again, the addition has been designed to be structurally  
5 and visually compatible with the existing real homes along  
6 Illinois Avenue and Jefferson Street, which is to the west.

7           So we believe that as demonstrated by the plans  
8 and the filings that we would comply with these four criteria  
9 for side yard relief.

10           Next slide, please. Again, just for the Board's  
11 consideration, this is just the general criteria. The R-3  
12 zone specifically contemplates orderly development of  
13 residential areas and the purpose of the R-3 is to  
14 accommodate this type of home expansion that allows for a  
15 better living situation at home. And, again, the criteria  
16 that we just mentioned demonstrates satisfaction of Subtitle  
17 X, 901.2B.

18           The next slide we can get into the variance  
19 relief. Obviously, we appreciate and understand that there's  
20 a higher standard here to meet the variance. There needs to  
21 be a demonstration of an exceptional situation that has a  
22 nexus with in this case for an area variance, a practical  
23 difficulty. And there should be no substantial detriment to  
24 the public good or the intent of the zoning regulations.

25           Can you move to the next slide? Thank you. And

1 as hopefully indicated in our filings and as demonstrated by  
2 this presentation, the exceptional situation stems from a  
3 variety of factors but really the configuration of the  
4 property.

5           As we've noted, as the Office of Planning has  
6 noted in its report, this property has an irregular shape and  
7 is smaller as compared to the other lots within the square,  
8 especially the nearby lots. It's of an average lot size.  
9 Actually, I should mention that the lot in its existing  
10 condition is not compliant with the R-3 zone. It's an  
11 existing non-conformity. But we're not obviously impacting  
12 the lot size with this addition.

13           But that said it weighs to the fact that there are  
14 existing non-conformities with the existing home itself with  
15 the side yard and the lot occupancy. So this confluence of  
16 factors we believe contributes to having an exceptional  
17 situation, which results in something that would be unduly  
18 burdensome for the homeowner in this case.

19           Again, there's only about 35 square feet that  
20 triggers the need to get a variance here. It would be  
21 practical and sensible to align the wall on the second floor,  
22 the side wall on the second floor, with the porch enclosure  
23 on the first floor. And I would just flag for the Board's  
24 attention that in these types of cases where the relief is  
25 so negligible, the Board has the authority to exercise a

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1 lesser burden in granting an area variance and has done so  
2 in the past.

3 Lastly, as we've indicated, there is no  
4 substantial detriment to the neighboring properties. This  
5 is also reflected in the letters of support that have been  
6 filed into the case record. And, of course, the R zones  
7 contemplate this type of home addition.

8 Unless Mr. Wilkerson wanted to supplement  
9 anything, I do not have anything further. And I thank the  
10 Board for its attention and consideration in this case.

11 BZA CHAIR HILL: All right, Mr. Cohen. That's  
12 okay. We'll just see if the Board has any questions of  
13 anybody. I'm going to turn first to the Office of Planning.

14 MS. FOTHERGILL: Good afternoon, Chairman Hill and  
15 members of the Board. I'm Anne Fothergill for the Office of  
16 Planning for BZA Case 20577.

17 The Office of Planning has recommended approval  
18 of both the special exception only for the side yard and the  
19 area variance relief for lot occupancy. We found that it  
20 meets the review criteria for the variance of Subtitle X,  
21 Section 1000.1, and for the special exception for side yard  
22 for Subtitle D, 5201 and Subtitle X, Section 901.2.

23 In terms of the variance relief, I can go through  
24 what we found. We did find that it met the three prongs of  
25 the variance test. The subject property is at a substandard

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1 lot of 1,151 square feet in a zone that has a minimum lot  
2 area of 3,000 square. And, as the applicant mentioned, it  
3 is significantly substandard compared to the other lots that  
4 are immediately surrounding it.

5 It also has an existing lot occupancy of 73  
6 percent so it is not in compliance with the 40 percent  
7 maximum lot occupancy of the zone. And we find that those  
8 are exceptional conditions of the property that we took  
9 practical difficult to complying.

10 They are not proposing to increase their ground  
11 floor lot occupancy. The proposal is to align the second  
12 floor with the first floor, and it would be practically  
13 difficult to not do that and to reduce it to 70 percent of  
14 the special exception category.

15 And then these factors together present an  
16 exceptional situation of the property that results in the  
17 practical difficulty and that there would be no substantial  
18 detriment to the public good. This is an existing non-  
19 conforming structure. And they are doing a small addition  
20 on the second floor.

21 It would not adversely affect the light, air or  
22 privacy available to the adjacent property and wouldn't have  
23 adverse impacts on the neighboring single family dwellings.  
24 It also would not harm the zoning regulations.

25 While the lot occupancy would exceed the maximum



1 allowed in the zone, the enclosure of the first floor porch  
2 and the addition above wouldn't be inconsistent with the  
3 intent of the zone to allow for orderly residential  
4 development that doesn't cause undue adverse impacts.

5 In terms of the special exception, we did find  
6 that it met the criteria 5201 and X, 901.2. And I don't  
7 think I need to go through unless you want me to. But as the  
8 applicant mentioned, the most affected building has a solid  
9 wall next to where the addition would be located so there  
10 would be no impacts on their windows in terms of light, air  
11 or privacy.

12 And I think that concludes my presentation. I'll  
13 rest on the record in support of the application. And I'm  
14 happy to take any questions.

15 BZA CHAIR HILL: Thank you, Ms. Fothergill. Does  
16 the Board have any questions for the Office of Planning? Mr.  
17 Young, is there anyone here who wishes to speak?

18 MR. YOUNG: We do not.

19 BZA CHAIR HILL: Mr. Cohen, is there anything you  
20 want to add at the end?

21 MR. COHEN: No, sir. Thank you very much for your  
22 time. I appreciate it.

23 BZA CHAIR HILL: Okay. Mr. Smith, did you have  
24 a question?

25 MEMBER SMITH: I think -- Ms. John, did you have

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1 a question first?

2 VICE CHAIRPERSON JOHN: Yes, just for Ms.  
3 Fothergill. In your report, did you mean to say approval of  
4 the variance relief and approval for the special exception?

5 MS. FOTHERGILL: Oh, I'm sorry. I read it  
6 incorrectly. You're fine. Thank you.

7 MEMBER SMITH: Okay. I do have a question. It's  
8 for Ms. Fothergill. I'm sorry. Ms. Fothergill, you had  
9 stated in your staff report about the practical difficulty  
10 of aligning the addition -- the new covered addition on the  
11 first floor and aligning it with the second floor. Can you  
12 expand on how you arrived at that practical difficulty?

13 MS. FOTHERGILL: Well, the --

14 MEMBER SMITH: Are they removing the existing  
15 porch?

16 MS. FOTHERGILL: Yes. I mean, they are enclosing  
17 the existing porch to create -- that would be enclosed  
18 condition space. And so it is reasonable to align the walls  
19 upstairs and that is where they are over in lot occupancy on  
20 the second floor. I mean, they're over on the first floor  
21 but that's an existing condition because the porch counts  
22 towards lot occupancy. So it's only on the second floor  
23 where they are putting the addition directly above the first  
24 floor that they need the relief.

25 MEMBER SMITH: Okay. And the practical difficulty

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1 you just say comes from -- I'm assuming you're stating that  
2 they can't shrink that porch to be in compliance with the 70  
3 percent, the existing porch, from 73. It's 70 percent.

4 MS. FOTHERGILL: I mean, they were constructing  
5 on the walls and the foundation of the existing condition.  
6 And so then --

7 MEMBER SMITH: Okay.

8 MS. FOTHERGILL: -- and that already is non-  
9 conforming for lot occupancy. And that part doesn't actually  
10 need the relief. It's the second floor above that needs the  
11 relief.

12 MEMBER SMITH: Okay. Yes. So I think you gave  
13 the clarification. They are building on the existing porch  
14 and the foundations of that. Okay. All right. Thank you.  
15 That was the only question.

16 BZA CHAIR HILL: Okay. Thank you. Mr. Cohen, did  
17 you have any questions for the Office of Planning?

18 MR. COHEN: No, sir. Thank you.

19 BZA CHAIR HILL: Okay. And I might have asked  
20 this. Do you have anything to add at the end?

21 MR. COHEN: I do not. I think we're okay. So  
22 thank you for your time. I appreciate it.

23 BZA CHAIR HILL: Okay. Thank you. I'm going to  
24 go ahead and close the hearing on the record. Mr. Young, if  
25 you could please excuse everyone. If I can ask somebody else

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1 to start because I'm getting tired on the day. I'm going to  
2 start with you, Mr. Smith. How do you like that? Is that  
3 okay?

4 MEMBER SMITH: I felt it was coming. I had to get  
5 one for the day, right?

6 BZA CHAIR HILL: Right.

7 MEMBER SMITH: So based on what the applicant has  
8 presented, I do believe that they have met the burden of  
9 proof for us to be able to grant the variance especially  
10 given the -- where they're proposing to expand, they're  
11 proposing to keep the existing foundation, keep the existing  
12 porch and enclose it, that existing non-conforming -- where  
13 the porch that's making it non-conforming to the lot  
14 occupancy requirements. And they're proposing to expand on  
15 top of that.

16 Based on the unique character of the lot given the  
17 size constraints in the size of the lot and also the setback  
18 requirements, I do believe that they have sufficiently met  
19 the first and second prongs of the test. Given that the  
20 proposed addition is abutting a blank wall, I do not believe  
21 that the proposed addition will have a substantial detriment  
22 to the public good. And given the size of the addition and  
23 the size of the lot, I do not believe it will have the  
24 sustained impairment of the intent, purpose and integrity of  
25 the zone plan.

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1           So I stand on the record, on OP's analysis here  
2 with their staff report in supporting the variance request  
3 by the applicant, and I will support the applicant.

4           BZA CHAIR HILL: Okay. Thank you. Commissioner  
5 Shapiro?

6           COMMISSIONER SHAPIRO: I think Board Member Smith  
7 said it well, and I have nothing to add Mr. Chair.

8           BZA CHAIR HILL: Vice Chair John?

9           VICE CHAIRPERSON JOHN: Thank you, Mr. Chair. I  
10 agree. I have nothing to add.

11          BZA CHAIR HILL: Mr. Blake?

12          MEMBER BLAKE: I concur.

13          (Simultaneous speaking.)

14          BZA CHAIR HILL: Sorry to interrupt you, Mr.  
15 Blake. Yes. I also agree with Mr. Smith and thank him for  
16 his analysis. Can I make -- I mean, it's a weird little  
17 thing that they're trying to build in there to fill in a  
18 spot. But I will go ahead and make a motion to approve  
19 Application Number 20577 as captioned and read by the  
20 Secretary and ask for a second. Ms. John?

21          VICE CHAIR JOHN: Second.

22          BZA CHAIR HILL: Motion made and seconded. Mr.  
23 Moy, could you take a roll call, please?

24          MR. MOY: When I call each of your names, if you  
25 would please respond with a yes, no or abstain to the motion

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1 made by Chairman Hill to approve the application for the  
2 relief being requested. The motion to approve was seconded  
3 by Vice Chair John. Zoning Commissioner Peter Shapiro?

4 COMMISSIONER SHAPIRO: Yes.

5 MR. MOY: Mr. Smith?

6 MEMBER SMITH: Yes.

7 MR. MOY: Mr. Blake?

8 MEMBER BLAKE: Yes.

9 MR. MOY: Vice Chair John?

10 VICE CHAIRPERSON JOHN: Yes.

11 MR. MOY: Chairman Hill?

12 BZA CHAIR HILL: Yes.

13 MR. MOY: The staff will record the vote as 5-0-0,  
14 and this is on the motion made by Chairman Hill to approve.  
15 It was seconded by Vice Chair John to approve. Also in  
16 support of the motion to approve is Zoning Commissioner Peter  
17 Shapiro, Mr. Smith, Mr. Blake, Vice Chair John and Chairman  
18 Hill. The motion carries on the vote of 5-0-0.

19 BZA CHAIR HILL: Great. Thank you, Mr. Moy. If  
20 you can call our -- try to call back up our last case.

21 MR. MOY: Okay. The Board is returning to Case  
22 Application Number 20556 of Jan Brandes and Brent Soper, S-O-  
23 P-E-R. For the record, again, this is an application that  
24 has been amended for special exception from the rear yard  
25 requirements of Subtitle D, Section 306.1 and lot occupancy

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1 requirements, Subtitle D, Section 304.1.

2           This would construct a rear one-story addition and  
3 a second story deck to an existing attached three-story with  
4 basement principal dwelling unit in the R-3 zone. The  
5 property is located at 2110 Bancroft Place Northwest, Square  
6 2532, Lot 53.

7           BZA CHAIR HILL: Okay. Let's see. Let's try this  
8 again. Mr. Young, did you get somebody on the phone?

9           MR. BRIGHAM: Hi, Mr. Chairman. Can you hear me?

10          BZA CHAIR HILL: Yes. Could you introduce  
11 yourself for the record, please?

12          MR. BRIGHAM: Yes. I'm Henry Brigham. I am the  
13 agent for the property at 2110 Bancroft Place Northwest.

14          BZA CHAIR HILL: Great. Mr. Brigham, do you have  
15 -- I'd like you go ahead and walk us through your applicant's  
16 -- sorry, your client's application and why you believe that  
17 we should grant the requested relief.

18          I don't see a PowerPoint or anything. Was there  
19 anything you wanted us to pull up or are you just going to  
20 talk us through it?

21          MR. BRIGHAM: Well, we could pull up Exhibit 46.  
22 It is the plans and elevations.

23          BZA CHAIR HILL: Yes. Okay.

24          MR. BRIGHAM: While those are being pulled up, I  
25 can talk through what we are seeking relief of.

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1 BZA CHAIR HILL: Thank you.

2 MR. BRIGHAM: Okay. So my client is seeking  
3 relief from --

4 BZA CHAIR HILL: Give me one second, Mr. Brigham.  
5 I think, Mr. Young, it was Exhibit 46, correct? I just  
6 wanted to make sure you're hearing us before -- okay. Great.  
7 All right. Mr. Brigham, go ahead and start talking. Can you  
8 see the screen?

9 MR. BRIGHAM: Yes, I can.

10 BZA CHAIR HILL: Okay. Great.

11 MR. BRIGHAM: Okay. So we are seeking relief from  
12 a rear yard setback, which is typically 20 feet minimum, and  
13 we are asking for 10 feet as well as a relief from lot  
14 occupancy going from 60.9 to 69.16.

15 In both cases, the existing is already non-  
16 conforming for both of these rear yard setback and lot  
17 occupancy. But what we are trying to do is we want to expand  
18 the kitchen on the first story of the property in order to  
19 make it more accessible for our client.

20 I think we do fulfill all the requirements whether  
21 about air and light and how it appeals to the surrounding  
22 neighborhood. So we can walk through a few of these sheets  
23 here as we go forward.

24 Showing the existing site, you can see a rear deck  
25 is the exact thing we're taking out and proposing a one-story

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1 kitchen.

2           If we go to the next sheet, this is where we --  
3 through the Office of Planning, they said they weren't going  
4 to recommend the area variance that we were originally going  
5 for.

6           And you can see why through some of this aerial  
7 shot of the neighborhood. We are one of the smallest, you  
8 know, lot occupancy buildings in this area. And most people  
9 have built within 5 feet of the lot line up to three what  
10 feels like four stories if you're in the alleyway. So what  
11 we're asking for is a very small about 300 foot addition to  
12 expand a kitchen in one of the smallest properties that is  
13 still in existence on this block.

14           So if we go forward, here are just some photos of  
15 the surrounding context. You see our property on the top  
16 right here is setback quite a bit. But then you can see, you  
17 know, some of the photos at seven, six and five of properties  
18 well, you know, against the alleyway that are already built  
19 up to that first floor -- sorry, to that second floor.

20           So if we continue, here is our existing plan of  
21 the house. As you can see right now, our deck that's  
22 elevated is at the 10 foot setback, which we're re-asking for  
23 and relief for the new proposed addition.

24           Also I'd like you guys to see that this is a  
25 kitchen. It's also at the rear right now. It is with -- our

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1 client is starting to, you know, face some physical  
2 challenges. And what we are doing is opening up this  
3 existing kitchen across so that's it is more accessible for  
4 the most part.

5 Now if we go to the next sheet, we'll see the  
6 proposed. So we maintain the same setback as what is  
7 existing there. And we are also only going 5 feet past our  
8 neighboring properties. This is still considered on the  
9 first story, the first floor. So a lot of the shadows that  
10 are casted in this case onto our neighbor's property would  
11 be considered, you know, subterranean even though it's open.  
12 It's usually a car port or a garage. Some are covered, some  
13 aren't. But we still share that in our study showing, you  
14 know, how that's affected.

15 If we keep going to the next sheet, this is the  
16 roof deck on the second floor so you exit out the second  
17 floor. It's similar to the roof deck that is currently in  
18 existence. The difference is it expands over the addition.  
19 But it shouldn't have a very large affect -- any affect at  
20 all because it's in between two brick party walls where it  
21 goes. It's not like we're looking over into someone's yard  
22 when you're on the roof deck.

23 The skylights and the addition, you can't walk on.  
24 So it's not like you can peer around the existing building.  
25 They're on either neighboring side.

1           So if we go forward one more sheet. This is the  
2 rear -- so we're having our proposed versus -- our existing  
3 versus proposed. And one thing I just wanted to note about  
4 our rear addition or proposed rear addition is that we  
5 actually submitted this to the historic preservation, Brendan  
6 Meyer, just to get their take on it.

7           And one of the requirements, you know, for this  
8 relief is does it fit the neighborhood? Does it fit, you  
9 know, the existing typologies? Does it have the aesthetics?  
10 And we got a very positive response even though Brendan also  
11 responded that we didn't have to go through them. But we  
12 just wanted to get a little bit of input from some of the  
13 people that have been working in this neighborhood for a long  
14 time and trying to keep the character.

15           So we think this goes a little bit above and  
16 beyond what we typically see in this alleyway. And it's also  
17 a pretty small scale addition in comparison.

18           So I think that is -- there is another exhibit  
19 that can show the solar studies, you know, the shade studies.  
20 Oh, yes, and there's the renderings. You can see at the roof  
21 deck, it's setback so you actually, you know, have two brick  
22 walls on each side. And you can kind of compare the plan  
23 with that rendering.

24           So the last thing, another thing, is an updated  
25 shadow study. I think that's Exhibit 47. And we can go

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1 through that real quickly just to touch base on that.

2 BZA CHAIR HILL: Okay. Mr. Brigham, I kind of --  
3 okay. Let me just check first if the Board has any questions  
4 for you. Does the Board have any questions for Mr. Brigham?  
5 Okay. I'm going to turn to the Office of Planning.

6 MR. KIRSCHENBAUM: Good evening, Chair Hill, and  
7 members of the Board of Zoning Adjustment. I'm Jonathan  
8 Kirschenbaum with the Office of Zoning. And we recommend  
9 approval of the two special exception requests. And we rest  
10 on our staff report. Please let me know if you have any  
11 further questions. Thank you.

12 BZA CHAIR HILL: Great. Does the Board have any  
13 questions for the Office of Planning? All right. Mr. Young,  
14 is there anyone here who wishes to speak?

15 MR. YOUNG: We do. We have one person who is  
16 calling in by phone who I can unmute now.

17 BZA CHAIR HILL: Okay. Perfect. Thank you.  
18 Hello?

19 MS. NADER: I'm here. Claire Nader.

20 BZA CHAIR HILL: Hi. Could you introduce yourself  
21 for the record, please?

22 MS. NADER: Yes. I'm Claire Nader, owner of 2112  
23 Bancroft Place Northwest, Washington, D.C. 2008.

24 BZA CHAIR HILL: Okay, Ms. Nader, welcome.

25 MS. NADER: Thank you very much.

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1 BZA CHAIR HILL: Ms. Nader, you'll have three  
2 minutes to give your testimony, and you can begin whenever  
3 you like.

4 MS. NADER: Well, we're in this predicament  
5 because these are townhouses. I think the variance that has  
6 been requested by the owners of 2110 Bancroft, reduce the  
7 value of my house.

8 The variance would block light from my back yard  
9 because it creates a cell-like atmosphere. It would also  
10 reduce the value of my property by limiting future owners  
11 from an open yard area for gardening or for children to play.  
12 Moreover, there is a law on the books which determines the  
13 ratio of the house foundation to lot size. This variance  
14 includes building beyond that, affecting the quality of the  
15 neighborhood.

16 There would be an overbearing wall extending 5  
17 feet from our joint wall along my small backyard. And the  
18 previous owner understood this so he very nicely acted  
19 neighborly and said he wouldn't do it.

20 It's important to talk about neighborliness. It  
21 is not to undermine the quality of neighborliness. And this  
22 variance does that when it extends like that. And it's in  
23 your face. So I would like them to readjust and think about  
24 that a little bit. If they had wanted the bigger kitchen,  
25 maybe a townhouse wasn't the thing to do.

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1 I'm just worrying that the quality of life would  
2 be less. You come out of your backdoor from the kitchen, and  
3 you'd hit this wall. And it's not comfortable. So I'm  
4 compelled to oppose the proposed variance and then extending  
5 up above and whether it fits or doesn't, it's out of scale  
6 in my mind.

7 BZA CHAIR HILL: Ms. Nader, are you the one  
8 directly next door?

9 MS. NADER: Yes.

10 BZA CHAIR HILL: If you're facing the -- if you're  
11 facing the applicant's house, are you the one to the right  
12 or the left?

13 MS. NADER: Wait a minute. If I'm standing on the  
14 sidewalk?

15 BZA CHAIR HILL: Yes.

16 MS. NADER: I'm the one to the right of 2110.

17 BZA CHAIR HILL: If you're standing on the --

18 MS. NADER: It's first Wardman house.

19 BZA CHAIR HILL: Okay.

20 MS. NADER: There are four of them after that,  
21 2112, 2114, 2108 and so on.

22 BZA CHAIR HILL: Oh, you're 2112.

23 MS. NADER: Yes.

24 BZA CHAIR HILL: Okay. And I'm sorry. I'm just  
25 trying to orient myself. If you're facing the applicant's

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1 house, on the sidewalk, you're the house to the right or the  
2 left?

3 MS. NADER: I'm the house to the right of them.  
4 There's one house on the -- where the Argentine is, 2108.  
5 Then you have the 2110, is that what it is, what we're  
6 talking about? Yes, 2110 Bancroft. And I'm 2112.

7 BZA CHAIR HILL: Okay.

8 MS. NADER: So if you go through the house,  
9 walking -- you come in the front door and you walk through  
10 to the back, the kitchen area, you can step outside and look  
11 to the left and speak to your neighbor but not if there's a  
12 big wall there.

13 BZA CHAIR HILL: Okay. I got you.

14 MS. NADER: Can I be more clear?

15 BZA CHAIR HILL: No, no. That's all right, Ms.  
16 Nader. I'm just trying to orient myself here as I'm looking  
17 at the slides. Oh, I see. Okay. I got you. I see which  
18 one you are. Okay. All right. So you've seen the plans,  
19 correct?

20 MS. NADER: Well, I haven't seen -- only what I  
21 could pull off.

22 BZA CHAIR HILL: Meaning they haven't met with  
23 you. Is that correct?

24 MS. NADER: No, they have not.

25 BZA CHAIR HILL: Okay.

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1 MS. NADER: They never even mentioned it. It was  
2 such a surprise.

3 BZA CHAIR HILL: Did you know about the ANC  
4 meeting or no?

5 MS. NADER: I did not because I'm out of town  
6 because of COVID.

7 BZA CHAIR HILL: Are you not in DC now?

8 MS. NADER: No.

9 BZA CHAIR HILL: Okay.

10 MS. NADER: I would have been at that ANC meeting.

11 BZA CHAIR HILL: Okay.

12 MS. NADER: I understand the ANC put in a support  
13 letter.

14 BZA CHAIR HILL: Got you.

15 MS. NADER: But they're not living there.

16 BZA CHAIR HILL: Got you. Okay. All right. All  
17 right. Let's see. Does the Board have any questions for Ms.  
18 Nader? Okay. All right. Ms. Nader, I'm going to put you  
19 on hold for a second. Okay?

20 MS. NADER: Yes. Just a moment. And I'm going  
21 to go answer the door. I'll be right back.

22 BZA CHAIR HILL: Okay. Mr. Young, if you could  
23 mute Ms. Nader. Okay. Mr. Brigham, can you hear me?

24 MR. BRIGHAM: Yes, I can hear you.

25 BZA CHAIR HILL: So do you know Ms. Nader? Have

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1 you guys tried to reach out to Ms. Nader?

2 MR. BRIGHAM: So I'm not positive on what my  
3 client has done. They have reached out to neighbors. I  
4 think they're -- mean, they're all in a different, certain  
5 generation where a lot of them are staying indoors. We  
6 knocked on her door's house. But we weren't able to get, you  
7 know, any type of response twice. And then we did knock on  
8 -- to the abutting neighbors so --

9 (Simultaneous speaking.)

10 BZA CHAIR HILL: Yes. So what about 2108? What  
11 about 2108?

12 MR. BRIGHAM: Yes. That's the letter we have  
13 support of. And that's also the one we really wanted to get  
14 support because we think we affect them the most.

15 If I could just quickly rebut to, you know, what  
16 Ms. Nader was saying was the sunlight and affecting her  
17 house, well, at 1808, which is two doors down on Connecticut,  
18 that's an eight-story building. So in the east, you know,  
19 which we're, you know, to the east of her property, it's  
20 being blocked out by a high rise. And then when the sun sets  
21 in the west, we are blocking 2108 Place more than anyone in  
22 how the condition works.

23 And so we have a support letter from them. And  
24 we've been working with them about, you know, any concerns,  
25 anything else. But we have not been able to really make

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1 contact, I don't think very well, with many other people  
2 there.

3 BZA CHAIR HILL: Yes. I'm just a little confused  
4 as to your -- I'm looking through your slide deck.

5 MR. BRIGHAM: Mm-hmm.

6 BZA CHAIR HILL: And I see where Ms. Nader's home  
7 is. And I don't see any windows on her side which you would  
8 necessarily be blocking. I'm just trying to understand how  
9 far out you're coming so that it would affect Ms. Nader's  
10 property at all.

11 MR. BRIGHAM: Well, we're only coming 5 feet so  
12 it doesn't affect -- I mean, it doesn't really affect --  
13 we've been told that in the past, she's talked about the  
14 house next door to her about just not really wanting  
15 construction, which I understand. But that's all word of  
16 mouth. I don't really know. I don't think we're really  
17 affecting anyone's property that much as these things go.

18 BZA CHAIR HILL: Okay. I understand. It's the  
19 5 feet. Okay. Okay. All right. Mr. Blake?

20 MEMBER BLAKE: I was going to ask this. So we had  
21 a similar letter from the Kalorama Court Condominium across  
22 the alley. I just wanted to kind of understand a little bit  
23 more about the communication you might have had with them.

24 MR. BRIGHAM: Yes. So for across the alley, since  
25 they weren't, like, our abutting neighbors, we did not go --

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1 actually, you know, I didn't even think to go all the way  
2 back there across the alley and built all the way to the  
3 property, to the alley line about three stories up.

4           So we didn't -- I did not reach out to them  
5 specifically. They were part of the radius, you know, where  
6 it's sent out. And we have altered, you know, the plans once  
7 in this process for them. But I saw the letter from them  
8 referring to the trees. And I think they're talking about  
9 our trees and our land. There are no trees on their  
10 property. It's just brick and concrete. And that we are  
11 moving closer to them, but we are actually not moving any  
12 closer than our current structure is. We are going up a  
13 little bit.

14           And then our windows are facing their windows,  
15 which they also already are. So I was a little bit caught  
16 off guard on that. We didn't have any of it in the ANC  
17 meeting, which I know from listening all day that that's not  
18 a definitive, you know, thing. But we have sent out letters  
19 to everyone. And as a condo, we definitely in the exhibits,  
20 we saw a lot those from that building were bounced back or  
21 returned to DC as well.

22           So we do apologize if we've taken anyone by storm,  
23 but we have posted the sign. We were at the ANC. And we  
24 were, you know, working with the neighbors that we have been  
25 in touch with, and we have been able to make contacts with.

1 But it is a kind of a generation that's been kind of staying  
2 in the home. So I would just say that we are always open to  
3 hear, you know, any type of notes. But we just thought that  
4 this addition was relatively minimal given, you know, the  
5 typology that is seen there so.

6 MEMBER BLAKE: You indicated that you had made  
7 some changes with regard to your project on account of the  
8 conversations with the Kalorama Court Condominium or was that  
9 with regard to 2108?

10 MR. BRIGHAM: So we've only changes based off  
11 actually OP. So we didn't -- they said that -- the office  
12 explained -- said that they weren't going to support a  
13 variance. And to be honest, I didn't think that they would.  
14 But my clients see that everyone else built out almost at 100  
15 percent except for the building restriction wide on Bancroft  
16 Street. So we put it in. We got their note. And then we  
17 had the plan to reduce it already in the works. So that's  
18 where the change is.

19 The historic preservation just applauded our  
20 stylistic version for this addition because, you know, they  
21 said it doesn't happen often where it's kind of nice to look  
22 at as you can see from some of the photos in the exhibits.  
23 It's pretty bad back there.

24 MEMBER BLAKE: Okay. Thank you. The only thing  
25 is that the communication with the neighbors would be helpful

1 because there were some concerns expressed, which really  
2 don't fit in with us. But dealing with construction matters  
3 and so forth, they're a little bit unknown about what they  
4 would expect. I mean, I think the scale of your project is  
5 really that significant relative to what they think may be  
6 happening from a Kalorama Court perspective. So good  
7 communication would probably deal with this issue.

8 MR. BRIGHAM: Yes. And for the neighbor to the  
9 east, we do have that letter. It's one of the late ones that  
10 was put into the exhibit so it's there. And there's some  
11 things spelled out about greenery, plants and other types of  
12 small things like that that we will be working with them to  
13 fulfill their wishes.

14 MEMBER BLAKE: And with regard to Ms. Nader,  
15 obviously she said she's not really had any information  
16 because she's away. It probably would be good to continue  
17 to talk with her as much as possible to get her up to speed  
18 on the process so she doesn't see it as being such a damaging  
19 project.

20 MR. BRIGHAM: Yes. And we're happy to do so. I  
21 think with the comments today, the 5 foot extension, it's  
22 something that, you know, we could have pushed harder for  
23 getting a 10 foot. And I think this is like the smallest  
24 kind of addition we could do with adding the kitchen because  
25 we're trying to preserve the historic part of this building.

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1           So all of the other rooms leading up to the  
2 kitchen, which is an option I did start trying to, like,  
3 allocate some room for that, are all original. So they are  
4 really not trying to touch any of the rooms on how they are  
5 set up.

6           I mean, I don't use, you know, a library or a  
7 parlor, but, you know, that's something that is very, you  
8 know, close to the heart for our clients. So we want just  
9 5 -- you know, we're just building out to where the deck is  
10 and getting rid of the deck to get a usable kitchen for them.  
11 And that's what we're asking for.

12           And we would love to keep in contact with Ms.  
13 Nader. But to be honest, it's been really hard as she's, you  
14 know, the sister of a politician, you know, a known  
15 politician, to get any type of information to contact her  
16 other than knock on her door.

17           BZA CHAIR HILL: Okay. Mr. Brigham, just try and  
18 keep in touch with the neighbors, okay, including Ms. Nader.

19           MR. BRIGHAM: Okay.

20           BZA CHAIR HILL: Okay. Let me see. Well, Mr.  
21 Kirschenbaum, can you hear me?

22           MR. KIRSCHENBAUM: Yes, hello.

23           BZA CHAIR HILL: Hi. So I'm just trying -- so in  
24 terms of the adjacent property, Ms. Nader, I've been looking  
25 at the slides. I mean, did you guys look at that? It seems

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1 as though there's 5 feet that's coming out otherwise there's  
2 nothing that's really going to be affecting that property.  
3 Is that correct?

4 MR. KIRSCHENBAUM: That's correct. And, you know,  
5 as we said in our staff report, the proposed addition is, you  
6 know, well below the permitted height for the zone. And, you  
7 know, this is also a house zoned where these types of  
8 conditions are more normal.

9 I also said I was with the Office of Zoning  
10 earlier. I'm with the Office of Planning just to clarify.

11 BZA CHAIR HILL: Right. And this is not a  
12 variance. This is a special exception, correct?

13 MR. KIRSCHENBAUM: These are two special  
14 exceptions.

15 BZA CHAIR HILL: Right. Because Ms. Nader had  
16 mentioned they were variances. And they're actually  
17 exceptions.

18 MR. KIRSCHENBAUM: They were two special  
19 exceptions. It was originally filed with a variance. And  
20 the application was subsequently revised to be all special  
21 exception.

22 BZA CHAIR HILL: Okay. Okay. All right. Let's  
23 see. Okay. Does anybody have any more questions for  
24 anybody? All right. Mr. Brigham, do you have anything else  
25 you'd like to add?

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1 MR. BRIGHAM: I just want to thank you for your  
2 time. I know it's been a long day so thanks.

3 BZA CHAIR HILL: Okay. Thank you. All right.  
4 I'm going to go ahead and close the hearing on the record and  
5 excuse everyone, Mr. Young.

6 MS. BRANDES: Mr. Hill?

7 BZA CHAIR HILL: Yes.

8 MS. BRANDES: I'm Brett's -- I'm the wife of Brett  
9 Soper. I just wanted to address a couple of things. I'm the  
10 owner. We did try to communicate with our neighbors.

11 BZA CHAIR HILL: Okay. Just a second. I'm sorry.  
12 Could you introduce yourself?

13 MS. BRANDES: I'm the owner. I'm on the call as  
14 Brett Soper, but my legal name is Jan Brandes. So I am the  
15 neighbor. I mean, I'm the -- so we have Ms. Nader has not  
16 been available for us to show her the plans. In fact, she's  
17 not someone who uses email. And she is in Connecticut most  
18 of the time. I certainly had coffee with her and had  
19 experiences with her. And she's very lovely.

20 I know that it's hard at 94 to want to have any  
21 change. I certainly understand that. But in terms of  
22 anything like devaluing the neighborhood or devaluing her  
23 property, she some years ago, before we bought the property,  
24 completely concreted. She has not one blade of grass in the  
25 back of her house.

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1           So we are doing everything we can. She basically  
2 has a concrete slab when she comes out the back of her house.  
3 And the second tier, the second story of her house, fell off  
4 and had to be taken off. So she has a door on her second  
5 story that walks into space.

6           So we are very conscious of our neighbors. Our  
7 neighbors on our left side if you are walking in our front  
8 door are people that we have -- you know, they have seen our  
9 plans.

10           BZA CHAIR HILL: Ms. Soper, Ms. Soper, you know,  
11 I appreciate it. I appreciate everything you're saying. And  
12 so I guess, you know, I don't know how you can continue, you  
13 know, we'll go ahead and have this conversation with my  
14 fellow Board members after we close the hearing.

15           MS. SOPER: I just want to be very clear that we  
16 are totally committed to historic preservation. And that my  
17 husband is losing his vision. We need to have a kitchen that  
18 he can get his wheelchair in. We're not doing this lightly.

19           And I understand that there may always be  
20 opposition for something. But I would sort of ask today, we  
21 want to do everything. And we are trying to do everything  
22 for minimal impact, and actually frankly for improvement.  
23 And I think that if you look at our plans carefully, you will  
24 see that anything we do would only add to the value of the  
25 neighborhood.

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1           So I know you all are exhausted. We've been  
2 watching since 9 o'clock this morning. I'm very grateful.  
3 It's reassuring to know that you all are doing this. So  
4 thank you so much and we can re -- you know, Ms. Nader is not  
5 here except for a few months out of the year. We can  
6 reinitiate our attempts with her and I will. I promise you  
7 I will.

8           But please give us due consideration because if  
9 we don't do this soon, you know, my husband is in a  
10 precarious situation. Thank you. And thank you to all the  
11 Board.

12           BZA CHAIR HILL: Got you. Okay. Thanks, Ms.  
13 Soper. No, thanks for -- that you had an opportunity to  
14 speak. Yes. Just please reach out to Ms. Nader and your  
15 neighbors obviously and inform them as to things that are  
16 going on as they're going on if this does move forward. All  
17 right?

18           MS. SOPER: Absolutely.

19           BZA CHAIR HILL: Okay. Good. Okay.

20           MS. SOPER: Absolutely. We already had.

21           BZA CHAIR HILL: Okay. Okay. Great. All right.  
22 Thank you, Ms. Soper. All right. Does anybody have any  
23 questions of Ms. Soper? All right. I'll now go ahead and  
24 close the hearing in the record. Mr. Young, if you could  
25 please excuse everyone.

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1           Okay.       I   actually   this   was   relatively  
2 straightforward.  I mean, you know, it does take time to kind  
3 of work through things with neighbors.  And I believe that  
4 in this particular instance, you know, the improvements that  
5 are trying to be made are relatively minimal.  I mean,  
6 they're going out 5 feet the side of the building that Ms.  
7 Nader is on does not have any windows on that side.

8           I think that, you know, the more affected  
9 property, and I don't think that is necessarily that  
10 affected, is the property to the left if you're facing the  
11 applicant's home.  And they're in support of the application.

12           I understand that perhaps Ms. Nader has not had  
13 as much time to take a look at everything.  But I do agree  
14 that or believe that Ms. Soper is genuine in what she is  
15 saying and that they will continue to work with Ms. Nader.

16           I would also agree with the analysis that the  
17 Office of Planning has put forward as well as that of the  
18 analysis of the ANC 2D and their approval of the work, and  
19 I believe they meet the criteria for the special exceptions.

20           I mean, again, they're not variances.  They could  
21 have been a variance.  And they went from that higher bar of  
22 a variance to a special exception, which I believe they have  
23 now met in terms of how we would be able to approve this  
24 application.  So I am going to vote in approval.  Mr. Smith?

25           MEMBER SMITH:  I agree with your analysis, Mr.

1 Chair. This is a request for special exceptions and not a  
2 variance. A variance is a higher level of scrutiny to ensure  
3 that the property owner has a true hardship which, you know,  
4 in this particular case, we're not evaluating this project  
5 against that hardship criteria. This is strictly special  
6 exception we are evaluating against the -- the very special  
7 exception criteria for the request for special exceptions  
8 from the rear yard requirements and lot occupancy  
9 requirements.

10 Based on what was presented in the record and by  
11 the Office of Planning in their report, I do believe that the  
12 proposed addition is at least not of a large size where it  
13 would have a major impact on the adjacent property owners.  
14 I do believe it's fair and honest. So based on that  
15 evaluation, I would support the special exception.

16 BZA CHAIR HILL: Thank you, Mr. Smith.  
17 Commissioner Shapiro?

18 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. The  
19 only thing I would add is that I agree with both you and  
20 Board Member Smith. It feels to me this was actually quite  
21 sensitively designed to minimize impact. And so I will be  
22 supporting it. That's all I have, Mr. Chair.

23 BZA CHAIR HILL: Thank you. Vice Chair John?

24 VICE CHAIRPERSON JOHN: Thank you, Mr. Chairman.  
25 I agree with the comments so far, and I have nothing further

1 to add.

2 BZA CHAIR HILL: Thank you. Mr. Blake?

3 MEMBER BLAKE: Yes. I agree with the comments,  
4 and I will be prepared to support.

5 BZA CHAIR HILL: Okay. Great. Thank you. I'm  
6 going to go ahead and make a motion to approve Application  
7 Number 20556 as captioned and read by the secretary and ask  
8 for a second, Ms. John?

9 VICE CHAIRPERSON JOHN: Second.

10 BZA CHAIR HILL: Mr. Moy, the motion has been made  
11 and seconded if you could go ahead and take a roll call?

12 MR. MOY: Yes. Thank you, Mr. Chairman. When I  
13 call each of your names, if you would please respond with a  
14 yes, no or abstain to the motion made by Chairman Hill to  
15 grant the request for zoning relief. The motion was seconded  
16 by Vice Chair John. Zoning Commissioner Peter Shapiro?

17 COMMISSIONER SHAPIRO: Yes.

18 MR. MOY: Mr. Smith?

19 MEMBER SMITH: Yes.

20 MR. MOY: Mr. Blake?

21 MEMBER BLAKE: Yes.

22 MR. MOY: Vice Chair John?

23 VICE CHAIRPERSON JOHN: Yes.

24 MR. MOY: Chairman Hill?

25 BZA CHAIR HILL: Yes.

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1 MR. MOY: The staff would record the vote as 5-0-  
2 0, and this is on the motion made by Chairman Hill to  
3 approve. The motion to approve was seconded by Vice Chair  
4 John. Also in support of the motion to approve is Zoning  
5 Commissioner Peter Shapiro, Mr. Smith, Mr. Blake, Vice Chair  
6 John and Chairman Hill. The motion carries on a vote of 5-0-  
7 0.

8 BZA CHAIR HILL: Okay. Great. Thank you, Mr.  
9 Moy. All right, everybody. Thank you so much. We made it  
10 in under 12 hours, which is different from last week's. And  
11 I think that's it. Anybody got anything they'd like to say  
12 at the conclusion of this fine day? All right. Okay. We  
13 stand adjourned. Bye-bye. See you next week.

14 (Whereupon, the above-entitled matter went off the  
15 record at 5:29 p.m.)  
16  
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C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: Public Hearing

Before: DC BZA

Date: 11-03-21

Place: teleconference

was duly recorded and accurately transcribed under  
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